

control by the Fisk firm? A. The history of the development of the property.

[6831] Q. Be specific. A. I can't do it. It is obvious from Exhibit 26 that I can't go through and put in categories each and every statement contained there. Exhibit 26 is a description of the historical development of the project.

Q. Will you take the first ten pages and be specific?

A. I can't be specific.

Q. Is there any part of the first ten pages of Exhibit 26 that bears on your conclusions as to control? A. I can't be specific about it. If you want me to sit here and read it and study it I will be glad to do it.

Q. Do you have to read it and study it, Mr. Gunn?

A. I certainly do. That exhibit was prepared by me eight years ago.

Q. Look at page 1. What is there on page 1 to indicate that Fisk acquired control from Hutchinson?

MR. KING: Your Honor, I object.

TRIAL EXAMINER: The witness said he couldn't do it without reading the exhibit. The Examiner will not delay the hearing while the witness reads the exhibit.

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[6832] By MR. HALL:

Q. What is there contained in the March 25, 1905, underwriting agreement about control passing from Hutchinson to Harvey Fisk and Sons? A. The fact that their name was mentioned and they were the bankers. There may be other things that indicate it but that is what I had in mind when I mentioned it.

[6833] Q. What other things, Mr. Gunn? A. I don't know. I said there may be. If you want me to study it I will be glad to undertake it.

Q. There is nothing in part 10 of Exhibit 27 which says that control passed from Hutchinson to Harvey Fisk and Sons. Isn't that so? A. Nothing except the fact

that Harvey Fisk and Sons were amongst the most powerful bankers in New York, and he is named as banker in that.

Q. A man could be banker and still not acquire control from Hutchinson. Isn't that so, Mr. Gunn? A. I doubt whether Harvey Fisk would do it or not.

Q. But they could do it? A. Sure, they could do anything if they were foolish enough.

Q. What is there about the Harlow-McGaw's sale of property, to which contract Harvey Fisk and Sons were a party, which indicates control passed from Hutchinson to Harvey Fisk and Sons? A. The fact Harlow-McGaw went to Harvey Fisk and Sons to sell their property.

TRIAL EXAMINER: What part of Exhibit 27 shows that? Do you know? 14 and 15?

THE WITNESS: Yes, sir.

[6834] By MR. HALL:

Q. How do you know the reason Harlow-McGaw went to the Fisk firm was not merely because they were named as bankers in this underwriting agreement? A. The reason I assume that was not the reason particularly was because Harlow-McGaw knew that the people who were named in a document such as the Fisk underwriting generally control the enterprise. They knew Hutchinson personally, knew very well they could go to him. Hutchinson would have been the logical man for them to approach on the sale of property. It just seems to me it was so well known that Harvey Fisk was running the McCall Ferry project that it was just obvious to them he was the man to go to. Or, indeed, Harlow-McGaw may have asked Hutchinson and Hutchinson may have said, "You will have to see Fisk."

. . .

By MR. HALL:

Q. What concrete evidence enables you to look into the minds of Harlow-McGaw and make the statements such as

you [6835] have just done? A. Nothing, Mr. Hall. You and I are just speculating on what might have happened.

TRIAL EXAMINER: Let's not speculate any further.

THE WITNESS: He asked a question and I was trying to answer.

MR. HALL: I am not speculating. You are the one that is speculating. Isn't that so?

TRIAL EXAMINER: I will rule out that question.

By MR. HALL:

Q. Will you refer, Mr. Gunn, to part 14 of Exhibit 27?

A. Yes, sir.

Q. Specifically the first paragraph on page 116 of Exhibit 27.

According to that first paragraph doesn't it appear that Mr. Houseman states that he approached Harvey Fisk and Sons, because the Fisk firm was named in the March 25, 1905, underwriting agreement? A. I can't draw that conclusion without reading further.

Q. Go ahead.

[6836] THE WITNESS: May I have the question, please?

(Question read.)

By MR. HALL:

Q. I mean named as bankers. A. I do not think you can draw that conclusion for the reason that the second paragraph states that at least one of the purposes of addressing the letter to Harvey Fisk and Sons was to explain about the fact Harvey Fisk and Sons were using Harlow-McGaw's Company name and wanted them to change it. It was perfectly proper he ought to go to whoever's name was on the document for such a purpose as that.

Q. So far as you know that is the only reason Harlow-McGaw went to the Fisk firm? A. I don't think that conclusion can be drawn. I don't know. It may very well have been that Houseman was using that as a pretext to

approach Fisk for the proposed merger of their interests shown on the second page of the letter. I just don't know.

[6838] By MR. HALL:

Q. Mr. Gunn, yesterday you stated that Mr. C. A. Coffin had received 775 shares of preferred stock, representing the 5 per cent additional bonus for subscriptions obtained by Mr. Coffin in connection with the initial financing. Is that so? You will find your testimony on page 6775 of yesterday's transcript. A. Yes, that is correct.

Q. That would mean, would it not, that Coffin had secured subscriptions in the principal amount of  $1\frac{1}{2}$  million dollars of bonds? A. Yes, it would mean that if you make the assumption that Mr. Coffin had secured all the subscriptions of which this represents five per cent. That we don't know except from the notation in Bertron, Griscom's books, which notation was to C. A. Coffin interest. I don't know what that word [6839] "interest" may have been. I don't know whether that word "interest" can be interpreted as meaning that all of the subscriptions of which the 775 shares or 5 per cent were subscriptions obtained by Coffin. I don't know that conclusion could be drawn.

Q. That could be reasonably interpreted to mean Coffin and those associated with him and selling that amount of bonds? A. Yes. The difficulty of it is I don't know who sold the bonds. That doesn't indicate who did the selling.

Q. Do you think that the million and a half is part of the  $2\frac{1}{2}$  million for which Lee, Higginson secured subscriptions? A. No, I wouldn't think that it was.

Q. You think it is in addition to the  $2\frac{1}{2}$  million subscriptions secured by Lee, Higginson? A. Yes, the notation indicates that that is true. The only point I am attempting to explain is that I don't know whether Coffin secured the subscriptions of which 775 shares are five per cent.



Q. Who could have secured them, Mr. Gunn? A. That I don't know. For instance, if I may try to explain a little further, Mr. Coffin may have subscribed to some personally and his associates in General Electric Company or other associates of his may have also subscribed [6840] to some. I don't know that the relationship between him and the other people is such that it would be proper to say that Coffin obtained the subscriptions. That is the only point I am attempting to clarify.

Q. Do you think that it was part of the million and a half dollars principal amount of bonds subscribed for under the March 1, 1905, agreement which represented the difference between the total subscriptions of 4 million dollars and Lee, Higginson's subscription of  $2\frac{1}{2}$  million dollars?

THE WITNESS: Will you read that back, please?

(Question read.)

THE WITNESS: I don't believe I understand that question, Mr. Hall. Could you simplify it a little? I can't follow it.

By MR. HALL:

Q. You have mentioned, Mr. Gunn, a figure of four million principal amount of bonds being sold under the initial agreement of March 1, 1905. A. Yes, that is a deduction. We think there were about four million dollars subscribed.

Q. Of that four million principal amount of bonds you have stated that Lee, Higginson obtained subscriptions for approximately  $2\frac{1}{2}$  million dollars? A. That is correct.

Q. That leaves us with 1 million 5 hundred thousand dollars principal amount of bonds for which subscriptions were [6841] secured? A. That is correct.

Q. Do you know whether or not the million and a half secured by Coffin and represented by the 775 shares is the million and a half not secured by Lee, Higginson and Company?

MR. KING: May we have that question read, please?  
(Question read.)

THE WITNESS: No, I don't know.

By MR. HALL:

Q. Do we add Coffin's one million and a half to the total of four million secured or is Coffin's million and a half included in the four million? A. I think in my opinion it is undoubtedly included in the four million. The thing that is giving me the difficulty is your repeated statement that Coffin obtained them. I don't know whether or not he did. With that qualification in my opinion the amount of bonds of which 775 shares would be the bonus was included in the four million dollars worth of bonds I estimated that the first syndicate obtained subscriptions for, and was in addition to the bonds subscribed to by Lee, Higginson.

Q. What amount of subscriptions did Bertron, Storrs and Griscom obtain under the initial financing? A. I don't know.

TRIAL EXAMINER: What is the question, please?  
[6842] (Question read.)

By MR. HALL:

Q. Do you know that Bertron, Storrs and Griscom procured any bond subscriptions at all under the initial financing? A. Well, at one time or another the firm, I believe, subscribed to \$80,000 worth as a firm.

Q. Was that under the initial— A. There is no way of telling. We know what the total subscriptions were but there is no way of being certain when those subscriptions came in or by whom they were obtained. The only thing we can do is to make an implication out of the fact this five per cent bonus went, simply a conclusion drawn from that fact.

Q. Don't you know this, Mr. Gunn: That those subscriptions to which the additional five per cent bonus at-

tached were obtained under the initial financing agreement?

A. Yes, sir, and that is the way we draw the conclusion that about four million dollars of bonds were obtained under the original underwriting, that is the underwriting agreement of March 1, 1905.

Q. Then, so far as you know, Mr. Gunn, you could account for subscriptions only by Coffin and Lee, Higginson and Company under the initial financing agreement?

THE WITNESS: May I have that question, please?

(Question read.)

[6843] THE WITNESS: No, that is not quite right. I could account for subscriptions by Lee, Higginson and I know there were other subscriptions, but I don't know who obtained them.

By MR. HALL:

Q. The only evidence you have seems to indicate, does it not, that Coffin obtained the subscriptions not obtained by Lee, Higginson and Company? A. No, that doesn't seem to me to be a reasonable conclusion for two reasons: First, Bertron was a banker and was the man who was heading the financing syndicate. It certainly seems to me he must have gotten, his firm must have gotten, some subscriptions. In addition to that, if you look at page 186 of Exhibit 27, you will find a notation down at the bottom of the page which reads "Owe," and then in brackets there are four names listed—Henry F. Dimock, Sanderson and Porte, and then an initial M. W. D. and then the H. McKittrick, and then opposite that group of names in another bracket, outside of which it states, "Not delivered," in an amount listing shares there are 275 shares listed. I have not been able to understand what that was but that might indicate some more.

Q. What do the initials M. W. D. stand for? A. I don't recall.

Q. Did you say you didn't know— A. I said I did not recall what the initials are.

[6844] Q. What do the 275 shares of preferred stock represent? A. Represents 275 shares of preferred stock is all I know.

Q. For what purpose was it issued? A. I don't know.

Q. What does the notation "Not delivered" mean to you? A. Well, it simply means to me, at least at the time this notation was made, either Bertron had not delivered it to the people who were entitled to have it, or that it had not been delivered to Bertron. I don't know which it means.

Q. You notice that the 775, 1,025, and 275 totals 2,075 shares? A. Yes.

[6845] Q. Then there is a subtraction of 1,875 shares with the note "Less our." What does that mean, Mr. Gunn?

A. I don't know. I have speculated on that a great deal. But this may be significant: Fisk says that he and Bertron and Griscom were joint bankers in this financing. We know that Fisk got 1,875 shares, and that notation may mean that Bertron, being in joint account with Fisk, also got 1,875 shares.

Q. Are you saying each got 1,875 shares for the same purpose? A. Whatever purpose it was. However, it appears Bertron was forced to use his 1,875 shares, and perhaps more shares than he got with his own firm's bond subscriptions, to satisfy the five per cent owing to subscriptions that had been obtained under his March 1, 1905, underwriting.

Q. Did you say the Fisk firm and Bertron, Storrs & Griscom operated a joint account? A. That is what Fisk said.

Q. Is Fisk's statement the only support for that answer? A. I couldn't say that is true. I can say this, though: The first time I knew that was when Fisk told me. I would say—

Q. Up to that time you had not had any indication of that fact? [6846] A. Up to that time I had not been able to put any of this story together.



Q. Isn't it possible, Mr. Gunn, that the 1,875 shares means that that is the sum total for both Bertron, Storrs & Griscom and Harvey Fisk and Sons? A. Read that again, please.

(Question read.)

THE WITNESS: No, I don't think that is possible.

By MR. HALL:

Q. Why not? A. Because, as I recall it, there was a stock certificate for a like amount of stock issued to either Harvey Fisk and Sons or to Susquehanna Contracting Company. I think it was probably Harvey Fisk and Sons.

Q. Were there two stock certificates issued for 1,875 shares of preferred stock? A. May I have the question, please?

(Question read.)

THE WITNESS: No, there was one stock certificate issued in that amount to Fisk, and then there were several other stock certificates issued for varying amounts, but none of the amounts, none of those other certificates were in the amount of 1,875 shares.

By MR. HALL:

Q. After subtracting the 1,875 shares from the 2,075, [6847] as shown at the bottom of page 186 of Exhibit 27, we have a remainder of 200 shares. What do the 200 shares represent? A. I don't know, except that it represents the difference between 2,075 and 1,875.

Q. But you don't know who got the 200 shares? A. I don't know whether or not anybody got it. The answer is no.

MR. HALL: May I have the question and answer, please?

(Question and answer read.)

By MR. HALL:

Q. Do you have any documentary evidence which would disclose a joint account between Harvey Fisk and Sons and

Bertron, Storrs and Griscom, or a joint banking arrangement? A. Read that, please.

(Question read.)

THE WITNESS: Yes, we have Fisk's affidavit.

By MR. HALL:

Q. Other than the Fisk affidavit? A. I don't have any particular document in mind except that the inference may be drawn from such as we were just discussing, from this page 186.

Q. You mean that is the inference you have drawn? A. Yes, sir.

Q. Would you expect Mr. Coffin to subscribe through Lee, Higginson and Company or through Bertron, Storrs and [6848] Griscom, Mr. Gunn, if Mr. Coffin was making subscriptions through any bankers?

MR. KING: May we have that question?

TRIAL EXAMINER: Yes.

(Question read.)

THE WITNESS: I don't know which one he would subscribe through. I have no opinion on that. I know nothing about Mr. Coffin's connections.

. . .

[6851] By MR. HALL:

Q. When you said this morning, Mr. Gunn, that Fisk and Sons displaced Hutchinson from control when Fisk and Sons came into the financing picture, do you mean that Fisk and Sons thereafter controlled the activities and affairs of McCall Ferry Power Company? A. That is my understanding.

Q. In other words, you are saying that McCall Ferry was dominated by, and its activities and affairs were subject to, the dictation and wishes of Fisk and Sons? A. Yes, that is my understanding.

Q. That would mean, would it not, that Fisk and Sons had the power to dictate who should be the officers of the company? A. Yes.

Q. Or who should be the directors? A. Yes, I should think it might even extend that far.

Q. Are you familiar with this letter of June 22, 1906, written by Cary T. Hutchinson to H. F. Dimock? The letter is copied from McCall Ferry Power Company file number 68. [6852] A. Yes, I am familiar with that.

MR. HALL: I pass the letter over to Mr. King for inspection.

By MR. HALL;

Q. Mr. Gunn, this letter reads as follows:

"Dear Mr. Dimock:

Mr. Eddy, of Simpson, Thacher and Bartlett, has just asked me what board of directors shall be elected at the annual meeting of the stockholders, which will be held in Lancaster next Tuesday; the stock will be voted entirely by proxy, and nobody need be there. I told Mr. Eddy to re-elect the present board of directors, with one possible exception, which is the substitution of Kirkland for somebody else; the trouble is to know whose place Kirkland should take. I do not see how it can be arranged at present; probably it will be better to let the board stand exactly as it is, and if you wish later to get someone to resign to make place for Kirkland this could be done very well if Kirkland will have a nominal residence in Pennsylvania, at the works, as we can then get one of the dummy directors to resign.

"Will you let me know certainly Monday morning what you wish done?

"Yours very sincerely,

"Cary T. Hutchinson."

Does that sound like Hutchinson had no voice in the [6853] direction of the affairs of McCall Ferry after Harvey

Fisk and Sons were in the picture? A. May I have the question, please?

(Question read.)

THE WITNESS: It sounds to me like he had very little voice and was being used as a messenger boy. You have to remember this: Mr. Eddy was a member of the firm of Simpson, Thacher and Bartlett but was not the member of the firm that ordinarily handled McCall Ferry's business. Mr. Dimock, President of McCall Ferry Power Company, was Mr. Hutchinson's father-in-law. I don't see that what is stated there indicates one way or the other about Hutchinson's influence.

By MR. HALL:

Q. Are you saying that Dimock was under the control and direction of Harvey Fisk and Sons? A. I certainly think he was.

Q. Even though he was Hutchinson's father-in-law? A. Yes, that didn't preclude Fisk from dominating him.

Q. You say that Fisk dominated McCall Ferry activities? A. That is my understanding.

Q. McCall Ferry activities, notwithstanding the fact that Hutchinson selected the board of directors? A. Yes, I say that because I don't believe Hutchinson selected the board of directors. If he did it would simply mean the board of directors didn't have too much influence.

[6854] Q. Is that your interpretation? A. Yes, that is my interpretation.

Q. Mr. Hutchinson was chief engineer of McCall Ferry among other things? A. Yes, sir.

Q. Do you think those are the duties of a chief engineer, to select members of a board of directors? A. No, but he might very well have discussed them with his father-in-law who was president, and particularly might that be true if there were somebody with a power superior to them.

Q. Is there any indication in Mr. Hutchinson's letter of a power superior? A. No, not in this particular letter



standing alone. I don't know what may have been the reply to this letter. I don't know what may have been the other associated correspondence.

Q. Doesn't Mr. Hutchinson's letter indicate that he had considerable influence in the affairs of McCall Ferry Power Company? A. No, it doesn't to me. All it indicates to me is that he is interceding with his father-in-law to get Kirkland, who was as I recall it vice-president of McCall Ferry Power Company, put on the board of directors perhaps in the place of one of the dummies who was on the board. That also does [6855] not speak too highly for the board's great power if it was filled with dummies.

Q. Apart from this intercession that you see in this letter, Mr. Gunn, it appears, does it not, that Hutchinson was asked to name the board of directors? A. No, sir, I don't think that follows from this letter.

Q. And you say that despite the fact, "Mr. Eddy, of Simpson, Tucker and Bartlett has just asked me what board of directors shall be elected at the annual meeting of the stockholders"? A. Certainly I say it in spite of that. Hutchinson didn't answer him when he asked him that, did he? He went to somebody else to ask them.

[6856] Q. What board of directors was elected, Mr. Gunn, at that meeting? A. I don't have anything before me which would indicate to me what the composition of the board which was then elected would be.

Q. How are you able to say they were dummies? A. The letter said so. I didn't say so. You just read it into the record yourself.

Q. I thought you characterized them as dummies. A. The letter characterizes them that way, Mr. Hall. You just read it into the record yourself.

Q. You didn't intend to so characterize the directors? A. I am repeating what the letter said. Certainly I know that at that time some of the directors weren't dummies by any manner of means.

Q. Such as? A. Pliny Fisk.

Q. He was a member of the board of directors? A. I think he was.

Q. Elected in June of 1906? A. I suspect he was. Let me look. I am not aware any substantial change took place in the board of directors of McCall Ferry after it was first constituted. The board on August 8, 1905, and there may have been some changes, but I don't think they were substantial, consisted of William M. [6857] Barnum. He was no dummy. A. C. Bedford. He wasn't either.

Q. Is that your opinion? A. That is my opinion. All these will be my opinion.

S. R. Bertron was not. E. J. Berwin was not.

Charles A. Coffin wasn't a dummy, I think.

Pliny Fisk wasn't.

Rodman E. Griscom wasn't. Gardiner M. Lane wasn't. William Barclay Parsons wasn't.

As to the rest of them, I don't know how you can classify them. I don't think you can call Dimock one appropriately.

Q. How many more are there? A. William F. Beyer. W. Merriott Canby, and J. J. Hope, and George B. Willson.

Those are the ones I am uncertain about.

Q. When you say you are uncertain about the last few individuals, what do you mean by that? A. I am uncertain as to how they would be classified in view of the fact that this letter that you just read into the record, dated June 22, 1906, refers to the board as having dummies on it. I was just looking down the list and speculating on which might be the dummies.

Q. Are you saying that Beyer, Canby, Hope and Willson might be referred to as dummy directors? A. We have to find a dummy somewhere to fit this letter. I thought it might be some of them.

[6858] Q. If, as you say, they were dummy directors, to whose direction were they subject? A. I don't know. I

don't even know they were the dummies Hutchinson referred to. I was just speculating on who they might be. Hutchinson in his letter to Dimock says he has some dummies and he is considering kicking one of them off the board. I was considering who the dummies might be.

Q. Do you think Hutchinson could have kicked them off the board of directors? A. No, I don't think he necessarily could, but I don't know who could have. I should think, however, that if Fisk, either through the majority of people on the board of directors or by some other means, had complete control of the company that he might be so gracious as to have Hutchinson have a director.

Q. Were all the directors you have named subject to Harvey Fisk and Sons' domination? A. In the sense that directors are dominated I suppose they were.

Q. Could they exercise independent judgments if Fisk didn't want them to? A. I don't know. I suppose they could. I don't know how long they would remain directors.

Q. In other words, you are saying that Fisk was in [6859] a position to impose his will on all those directors. A. In the matters of McCall Ferry Power Company that is my understanding of it. That is what Fisk said he could do.

Q. In other words, Fisk was in a position to impose his will on the president of General Electric Company, C. A. Coffin? A. No, I do not necessarily mean impose in that sense. I simply mean this: That if Mr. Fisk picked these individuals and put them on McCall Ferry board, and Mr. Fisk was primarily responsible for the success of the enterprise, I would expect the men who Mr. Fisk put on the board to support Mr. Fisk's policies.

Q. Did Mr. Fisk select and put those individuals on the board? A. I don't know.

Q. Mr. Eddy's request of Hutchinson is a natural one, isn't it, in view of the fact that Hutchinson was the owner of the largest block of stock? A. No, I don't think it is a



natural one because I don't believe Hutchinson was the owner of the largest block of stock.

Q. Who owned more than 18,840 shares, assuming that is all Hutchinson had? A. I don't know who owned more shares than that. I don't make the assumption Hutchinson had that many shares [6860] beneficially of his own.

Q. Can you state that to be a fact? A. Well, Hutchinson says he used approximately half of the 18,000 shares for the purpose of meeting the obligations he had created in developing the enterprise. So I assume that he had only about half that amount.

Q. You mean Hutchinson says that in Part 1, in his statement which is Part 1, of Exhibit 27? A. Yes.

Q. But that does not mean Hutchinson gave up his power to vote the stock that he gave up if he did? A. Well, he certainly gave up his power to vote some of it.

Q. Do you know to whom Hutchinson gave half of the 18,840 shares? A. No, but I know some of the people to whom he gave some of it.

Q. How much can you account for? A. Well, he gave one thousand shares to Coudert Brothers, one thousand shares to Thomas Newhall, and it seems to me he gave some lesser amounts to other people. Perhaps some engineers working for him, as I recall it.

Q. Was Ehle one of them? A. I believe Ehle got some shares.

Q. When were the two blocks of 1,000 shares delivered to [6861] Coudert Brothers and Newhall? A. I don't have anything before me that will indicate that.

Q. Mr. Gunn, according to page 17 of Exhibit 51, the Commission's accountant, Mr. Newlands, states that the certificates for the two 1,000 shares of stock that you have just referred to were issued in 1909.

My information is that certificate number 30 for 1,000 shares went to Newhall and No. 43, for 1,000 shares, went to Lorenzo Semple. Does that check with your information? A. Just a moment and I will see.



May I have that question, please?

(Question read.)

THE WITNESS: Not necessarily. May I ask this: Those certificates referred to there are McCall Ferry Power Company certificates, are they?

By MR. HALL:

Q. That is right. A. I don't think that has very much significance because this stock from the time it was first distributed was distributed, as I understand it, as voting trust certificates, and probably all this would mean here would be in exchange of voting trust certificates for McCall Ferry Power Company certificates.

Q. Then, in that case, Mr. Gunn, control depended upon [6862] the voting trust, didn't it? A. Yes, I would say that it did, or at least it was another agency which represented the stockholders, as I recall for the period of construction under Fisk financing arrangements.

I am not saying, however, that as an independent agency it has such control over the corporation. Don't misunderstand me.

Q. Who controlled the voting ~~trusts~~ under the voting trust agreement, Mr. Gunn? A. Undoubtedly, as I understand it, Fisk did.

Q. Why do you say "undoubtedly", Mr. Gunn? A. Because Mr. Fisk says he did and Mr. Hutchinson says Fisk did.

Q. And that is the basis of your statement, right? A. That plus all the other things we have talked about which relate to Fisk's control.

TRIAL EXAMINER: That voting trust agreement was as of what date?

MR. HALL: As I understand it it was created January, 1906.

THE WITNESS: As I recall it that is about the time.

MR. GOLDBERG: January 20th is the date I think we used this morning.

THE WITNESS: A moment ago, when I mentioned where [6863] Hutchinson's might have done, I missed one item. 1,000 shares also were given to Lorenzo Semple.

By MR. HALL:

Q. I think we had covered that. Those are the thousand shares that went to Coudert Brothers; isn't that right, Mr. Guinn? A. Yes.

Q. I believe you mentioned the fact that Mr. Dimock, Hutchinson's father-in-law, was president of McCall Ferry Power Company. A. Yes.

Q. During what period was he president? Wasn't it from August 8, 1905 until the bankruptcy? A. No, before that. He was president on August 8, 1905.

Q. Was he the only president that McCall Ferry ever had? A. As I recall it, he was.

Q. All right. A. Maybe we had better correct that last answer. Prior to August 8, 1905, when Dimock was elected president, there had been what I think I referred to as a dummy president prior to that.

Q. McCall Ferry was created in April, 1905, and this dummy president you referred to served up until what date? A. As my records show it, until August 8, 1905.

Q. When was Susquehanna Contracting Company [6864] incorporated? A. June 12, 1905.

Q. What was the purpose of its incorporation? A. First to acquire or construct hydro-electric developments along the Susquehanna River; second, to do a general contracting business—third, to purchase, lease, and so forth, rights and interests in respect to real estate and water—fourth, to acquire and sell machinery, supplies, merchandise, and so forth—fifth, to acquire, use, and dispose of rights in respect to construction, manufactured, and so forth. Sixth, to acquire, pledge, and sell securities of any

corporation and to issue in exchange therefor its own securities.

Q. Did you get that from the certificate of incorporation? A. Yes, sir, I believe that is where I got it.

Q. Was Susquehanna Contracting Company created in connection with the project? A. Yes.

Q. What was its particular function in connection with the project? A. It was the corporate medium through which the securities of McCall Ferry Power Company passed to the subscribers and other people who got them, and also through which the lands and water power rights passed from the people [6865] who owned them, to McCall Ferry Power Company.

Q. Those are two sides of the same purpose, right—in other words, the securities passed for the property?

A. Yes, as I understand it—for the property, and, of course, the cash which was raised from the subscribers.

Q. In other words, it was acting as a vehicle in securing the property and distributing the securities? A. I suppose you could call it that. I don't know what the legal significance was.

Q. Why didn't Hutchinson and the others pass their property directly to McCall Ferry? A. I don't know.

Q. At the time Susquehanna Contracting Company was formed, all the bonds had been sold. Right? I mean bond subscriptions had been obtained. A. Yes, I believe they had been obtained.

Q. Do you know of any obstacle that existed which would prevent Hutchinson and the others from passing their property directly to McCall Ferry rather than going through Susquehanna Contracting Company? A. No, I personally don't know of any. I assume there must have been a reason for its creation or they wouldn't have created Susquehanna Contracting Company.

Q. Did you ask Hutchinson or anyone else what the reason was? [6866] A. I don't recall that I did.

Q. Weren't you ever interested in the reason for the creation of Susquehanna Contracting Company? A. As

a matter of curiosity I might have been. I noticed this about the study of the hydroelectric developments on the river: Apparently any time anybody got the idea that they wanted to develop a hydroelectric project they had Susquehanna Contracting Company or its equivalent in the picture. So I assume there must have been some reason for it. As you recall from Exhibit 26, Hutchinson had one; he didn't call it Susquehanna Contracting Company, when he was first planning the development under the Dimock, Bertron and Barney underwriting.

Q. Was that the contemplated company that Johnson had reference to in his letter which is part 4 of Exhibit 27? A. Do you have reference to the particular part of the letter?

MR. GOLDBERG: Let us have the pending question.

(Question read.)

By MR. HALL:

Q. What I mean, Mr. Gunn, is did they follow, in creating Susquehanna Contracting Company, the method contemplated by Mr. Johnson in his opinion? A. That is my understanding of it.

Q. May we properly refer to Susquehanna Contracting [6867] Company as a "paper company"?

MR. KING: May I ask what you mean by a "paper" company?

MR. HALL: What I have in mind, Mr. King, is what the company meant on page 3 of item "K" in this proceeding where in the first complete paragraph they said, "It" referring to Susquehanna Contracting Company "had a capital stock of only \$500 and was a 'paper' company which did no construction work and derived no profit. It was dissolved in April, 1910."

THE WITNESS: In the sense it is described there you may refer to it as a paper company. My hesitancy was in describing it in this discussion, whether it might have had



some legal significance or purpose. I guess you could also call that paper.

By MR. HALL:

Q: It is a fact, is it not, Mr. Gunn, that the temporary McCall Ferry Power Company bonds in the principal amount of \$8,483,000 were first turned over to Susquehanna Contracting Company?

THE WITNESS: Will you read that for me, please?

(Question read.)

THE WITNESS: What do you mean by "temporary bonds", Mr. Hall? To what do they refer?

[6868] By MR. HALL:

Q. What bonds did Susquehanna Contracting Company get from McCall Ferry Power Company under its contract with McCall Ferry under the contract which is Part 18 of Exhibit 27? In other words, were not temporary certificates delivered by McCall Ferry to Susquehanna Contracting Company under that agreement? A. Perhaps they were temporary but I always looked upon them as being the bonds of McCall Ferry Power Company.

Q. As of what date were the bonds turned over to Susquehanna Contracting Company? A. It is my understanding the bonds are dated June 15th. I have nothing before me to indicate that.

Q. My impression is that they were turned over to Susquehanna Contracting Company on August 8, 1905. Will you check that? A. Yes, I will.

Q: After the bonds were turned over to Susquehanna Contracting Company, it retained them until February 1908. Isn't that so, except, of course, for the bonds issued to Harlow-McGaw? A. I think that is correct.

Q. In February, 1908, part of them were issued for the first time to subscribers. Is that right? I am referring now to the non-deferred subscribers. [6869] A. Yes, I believe that is correct.

Q. And they had been held until February of 1908 because they were not to be issued to the subscribers until fully paid for? A. Yes, that is correct. They had been pledged under the loan arrangement with Knickerbocker Trust Company.

Q. There was no loan on the non-deferred subscribers?

A. Yes, that is right. I was mistaken about that.

Q. The non-deferred subscribers, as I understand it, represented the principle amount of \$1,895,000. A. That sounds correct. I can check it if you wish.

Q. The balance of the bonds to the deferred subscribers were not issued until November 1908 or later, being held by Knickerbocker Trust Company? A. Yes, that is correct.

Q. And they totaled \$6,180,000 in principal amount? A. That is correct.

[6870] By Mr. HALL:

Q. Am I correct in saying, Mr. Gunn, that you have included in your original cost claim certain amounts as representing the cash value of common and preferred stock issued by McCall Ferry Power Company in 1905? A. Yes, I believe that is correct.

Q. What total amount have you included in Pennsylvania Water's original cost claim as the claimed cash value of those securities?

THE WITNESS: There is included in the claimed cost to Pennsylvania Water and Power Company an amount of \$471,000, which represents the 18,840 shares valued at \$25 a share which was given to Hutchinson for his property.

By Mr. HALL:

Q. You mean the common stock was valued at \$25 per share? A. Yes, sir.

There is also included \$25,000 representing 1,000 shares of common stock at \$25 a share which was given to Harlow and McGaw in the acquisition of their rights.

Did you want the bonds, also?

Q. If you would limit it to common and preferred stock [6871] right now I think it would keep the record straight.

A. There was also included, I believe, an amount of \$3,750 representing 150 shares of common stock at \$25 which was given in acquisition of the Pullen option.

There is included also an amount of \$199,570.31 which represents three-eighths of the total value of securities given to Harvey Fisk and Sons for their services. Those securities which Harvey Fisk and Sons received were 1,875 shares of preferred stock, which for this purpose was valued at \$50, 17,537½ shares of common stock which was valued at \$25 a share.

As I recall it, I believe that is all.

Q. What does that total, Mr. Gunn?

. . .

[6873] MR. HALL: My information is that the total figure was \$1,031,273.46.

MR. KING: May I say we did some mathematics here and it indicates to us that that figure is approximately correct.

TRIAL EXAMINER: What is that figure, please?

(Amount read by reporter.)

THE WITNESS: Yes, that is approximately the figure.

By MR. HALL:

Q. What portion of the total figure that I have mentioned represents incorporators' shares? A. Ten shares, as I recall it.

Q. \$250?

. . .

[6874] THE WITNESS: I think I can explain it, Mr. Examiner, if you will permit me.

TRIAL EXAMINER: All right.

THE WITNESS: The way I made up the figure was by taking the stock valuation item in number 1 of Page 53 of Exhibit 26.

Q TRIAL EXAMINER: All right.

THE WITNESS: Plus the common stock item in number 2 on that page, plus the common stock item in number 3 on that page, then I skipped to the bottom of the page and took the \$199,570.31, and then from a different source I took an amount of \$331,703.15 which is a calculation based upon the [6875] ratio of the exchange of bonds and stocks of Pennsylvania Water and Power Company related to the par value of the bonds of McCall Ferry Power Company which were outstanding, and the total comes out to be \$1,031,273.46. But in order to make it that total I believe you have to add in ten of the qualifying shares which I did not mention and which are shown on Page 53.

MR. HALL: That agrees, Mr. Examiner, with my information.

TRIAL EXAMINER: How is it you didn't include the original cost to McCall Company so far as it related to preferred and common stock of McCall Company?

THE WITNESS: May I have the inquiry?

(Question read.)

THE WITNESS: I don't believe I quite understand the question, Mr. Examiner. I am sorry.

TRIAL EXAMINER: You were asked how much of the original cost reflects the valuation placed on the preferred and common stock of McCall Ferry Power Company?

THE WITNESS: Yes.

TRIAL EXAMINER: How much of that was included in the original cost statement of Pennsylvania Water and Power Company?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: All right. Now, in Exhibit 26, Pages 53 [6876] and 54 you have the original cost to



McCall Company of its preferred and common stock. Then when you answered the question you went over that list and picked out certain items and excluded certain items.

Why did you make that selection in order to get your \$1,031,000 figure?

THE WITNESS: I understand. The items I excluded were not proper elements of capital cost and were not included in our claim for original cost as it was prepared and filed.

TRIAL EXAMINER: Why is it with Penn Water and not with McCall? Why isn't it so far as Penn Water is concerned and why is it original cost to McCall?

MR. HALL: I believe during the course of cross-examination we will develop what you are now trying to ascertain.

TRIAL EXAMINER: All right.

MR. HALL: What I am saying, we will develop the calculations in detail.

MR. GOLDBERG: Do I understand the Examiner's inquiry to be this: The statement on Page 53 of Exhibit 26 is in part: "The original cost to McCall Company," and the Examiner wants to know why it should not be "The original cost to Penn Water Company"?

[6877] TRIAL EXAMINER: Well, to this extent: In determining the original cost to Penn Water the witness has used the original cost to McCall Company of certain blocks of these securities but not other blocks of the same types of securities.

THE WITNESS: The reason for that, Mr. Examiner, you are referring now to the items I excluded, the \$332,617.19 shown at the bottom of page 53, and the other two items, the two other items on page 54. The reason why those were not claimed as a part of the original cost either of McCall Ferry Power Company or Pennsylvania Water and Power

Company is because they were financing charge costs and were not properly included as a part of the original cost except to the extent that they enter into the determination of that figure of \$331,703.15.

**TRIAL EXAMINER:** Your heading is original cost to McCall Company for all those items.

**THE WITNESS:** Yes. Those items listed there are original cost to McCall Company, but the use of "original cost" there is not the same as the use and definition of original cost in the classification of accounts.

**TRIAL EXAMINER:** You do not make that clear, do you, in your Exhibit?

**THE WITNESS:** Not at this particular point, but it is made clear in the original cost filing.

[6878] By **MR. HALL:**

**Q.** Where is that mentioned in the original cost filing, Mr. Gunn? **A.** What do you mean by that?

**MR. HALL:** You said it was made clear in the original cost filing.

**THE WITNESS:** It is made clear in the original cost filing by the inclusion in Account 301, organization expense of the amount of \$331,703.15.

By **MR. HALL:**

**Q.** Do you show a separate amount for each of the other items making up the total? **A.** Total of what?

**Q.** \$1,031,273.46.

**THE WITNESS:** May I have the question, please?

(Question read.)

**THE WITNESS:** Yes, sir, they are shown on pages 53 and 54 of Exhibit 26.

By **MR. HALL:**

**Q.** Item "K", Mr. Gunn, is Penn Water's original cost claim filed in 1940. Is that right? **A.** Yes.

Q. Where in Item "K" do you show the breakdown of this total figure we have been talking about? A. You mean of the \$1,031,273.46?

[6879] Q. Yes. A. No, that breakdown is not shown in the original cost filing, but the results of it are included in the original cost filing.

Q. As a matter of fact, Mr. Gunn, Item "K" doesn't indicate within its covers that cash value is claimed for common and preferred stock. Isn't that so? A. That very well may be true. Item "K" indicates what the Federal Power Commission requested that Item "K" should indicate. We had an elaborate set of specifications as to what should be put in Item "K".

[6881] TRIAL EXAMINER: Why didn't you pick up the \$93,750, and the \$438,437.50?

THE WITNESS: I did not for the reason that Fisk stated that three-eighths of the total amount of \$532,187 was for management services, and under the classification of accounts management service is a proper capital cost.

He stated that five-eighths of that total figure was for banking service, and it is my understanding that the banking services were not proper capital items under the uniform system of accounts.

[6882] TRIAL EXAMINER: You have an item of \$532,187.50 under number 4.

THE WITNESS: Yes, sir.

TRIAL EXAMINER: You have got it under original cost.

My question is why include the total figure if you say five-eighths of it is not includable?

THE WITNESS: Mr. Examiner, this tabulation on page 53 is not our claim for original cost. It is merely put there for the purpose of setting forth everything that McCall Ferry got in exchange of securities.

Now, one of those things they got was banking services. Banking services is not a proper part of original cost and the division is here made for the purpose of excluding it from the cost.

[6884] THE WITNESS: Are you asking me now the date of the issuance of the stock or the date of the commitment to issue it? Which are you asking?

By MR. HALL:

Q. Date of the issuance of the stock? A. I don't have that information before me.

Q. Give me the date of the commitment.

Mr. Gunn, is not the date of the transaction for all of the stock you have listed June, 1905? A. Yes, I think the commitments were made in that month.

Q. And that applies to the stock issued to Bertron, Storrs and Griscom and Lee, Higginson and Company shown at the top of page 54 of Exhibit 26? A. Yes, sir, I think that also applies to that.

[6886] Q. Mr. Gunn, have you indicated why 1,000 shares of common stock was given to Harlow-McGaw? A. It was part of the consideration which Harlow-McGaw received for his water power rights, lands, canals and other things of value he held on the river and turned over to Susquehanna Contracting Company through Harvey Fisk and Sons.

Q. Why did Pullen get 150 shares? A. That was, as I understand it, in purchase of the option that he held over Harlow-McGaw's property.

Q. That payment to Pullen was in the nature of a nuisance payment, wasn't it? A. I wouldn't say so, no, no more than a nuisance payment on anything else you buy that you want.

Q. It was to get Pullen out of the way so that they could proceed? A. It was to acquire Pullen's option



which he held on Harlow-McGaw's property. You can call it whatever you please. That is what it was.

[6887] Q. What do you say the purpose was for Harvey Fisk and Sons receiving 1,875 shares of preferred stock?

A. That was part of their compensation for the management and banking services they rendered.

Q. And the basis for that statement is what? [6888]

A. Fisk affidavit.

Q. Does that also apply to the 17,537½ shares of common stock which you assigned to Fisk? A. Yes, sir.

Q. What does the payment of 5,000 shares of common stock to Lee, Higginson and Company represent? A. Banking services and obtaining subscriptions to bonds and the underwriting.

Q. Did you include in your claim of original cost any cash value for the bonds which were issued by McCall Ferry? A. Yes, sir.

Q. In what total amount? Is it \$225,000? A. Yes, sir, \$225,000. That was issued in acquisition of the Harlow-McGaw properties.

Q. What does that amount to in terms of cash value per bond? A. \$900 per bond.

Q. Did you attempt to determine the cash value of the common and preferred stock? A. McCall Ferry common and preferred stock?

Q. That is right. A. Yes, sir.

[6889] Q. In other words, you attempted to proceed in accordance with Electric Plant Account instruction 3-D? A. Yes, sir, I undertook to comply with that requirement.

Q. And you construed that as a requirement that the cash value of the securities be determined? A. Yes, if they could be determined.

Q. What do you understand by cash value of securities? A. I understand it to mean their cash value.

Q. It is, is it not, the amount of dollars that could be received from a willing purchaser at the time of the trans-

action in which the securities passed? A. Yes, I would say that is a definition of it.

Q. If no one is willing to pay cash for the security it has no cash value. Isn't that right? A. Yes, that would seem to follow.

Q. The cash value is not what may be secured at some time in the future. Is that right? A. May I have that question?

(Question read.)

THE WITNESS: You mean the cash value at a given time is not the cash value, the cash that could be received at some time in the future?

By MR. HALL:

Q. That is correct. [6890] A. I think it is correct that it is not.

By MR. HALL:

Q. Did you, during your original cost study, obtain affidavits from Cary T. Hutchinson, Pliny Fisk, George C. Lee, and James E. Hopkins for the purpose of assisting you in placing a value on the McCall Ferry Power Company common stock? A. Yes, that was one of the purposes for which those affidavits were secured.

Q. Do the affidavits to which I have just referred comprise parts 1, 9, 8, and 24 of Exhibit 27? [6891] A. Yes, sir.

Q. On Page 52 of Exhibit 26 I believe you point out that the individuals who signed these affidavits arrived at their valuation of the common stock in question, "by means of a valuation of services rendered." Is that correct? A. Where does that occur?

Q. Your exact statement at the bottom of Page 52 and top of Page 53 is as follows: "Inasmuch as the foregoing values for the stock were arrived at by means of a valuation of services rendered, it was necessary to establish one

value for the stock in order to determine the cost of these services to the company." A. Yes, sir, it so states.

[6894] By Mr. HALL:

Q. Mr. Gunn, will you refer to transcript pages 6890 and 6891? A. Yes, sir.

Q. As is there shown you have recognized that the method utilized by Fisk, Hutchinson and others in their affidavits is not proper for the purpose of arriving at the cash value of the common stock at the time of the transaction. Isn't that so?

MR. KING: May we have the question read, please?

(Question read.)

THE WITNESS: No, sir, that is not correct.

By Mr. HALL:

Q. Didn't the individuals to whom I have referred value services rather than the stock? A. They valued services as the only means of arriving at the value of the stock under the circumstances which existed in that case.

Q. Didn't you recognize in that statement that [6895] Instruction 3-D required determination of cash value of stock and not services?

MR. KING: You mean the statement on page 6891?

MR. HALL: That is correct.

THE WITNESS: It was not my intention to take any such recognition of it. My understanding of Instruction 3-D as explained before yesterday, is that it was necessary—or I had better say, as I have already explained, too,—that there was some uncertainty in my mind about it.

Instruction 3-D seems to me to require obtaining a cash value for the stock at the time it was given.

Now, if it be freely traded in the market, and the market afforded a basis for valuing the stock directly, that

would have been one way of doing it. But that was not the situation in the case of McCall Ferry Power Company, and in order to value it it was necessary to value the thing for which the stock was exchanged, in this case, in the case of Lee, Higginson, at least, it was services.

In the case of Bertron it was services. In the case of Harvey Fisk and Sons it was services. In the case of Hutchinson it was both property and services.

By ~~MR.~~ HALL:

Q. Generally, what kind of services did Bertron's firm render? A. Financial services in raising the money.

[6896] Q. In view of what you have just said what did you mean when you stated at the bottom of page 52 and at the top of page 53 in Exhibit 26 as follows:

"Inasmuch as the foregoing different values for the stock were arrived at by means of a valuation of services rendered, it was necessary to establish one value for the stock in order to determine the cost of these services to the company?"

THE WITNESS: Will you read that, please?

(Question read.)

THE WITNESS: I meant precisely what I explained in my previous answer.

By MR. HALL:

Q. Isn't it a fact that neither Hutchinson, Fisk, Lee, nor Hopkins at any place in their affidavits claim that the values they have assigned represent cash value of the common stock at the time of the transaction?

THE WITNESS: May I have that question?

(Question read.)

THE WITNESS: No, I don't think that is a fact.

By MR. HALL:

Q. Will you refer to those affidavits and point out where they say that they are determining the cash value



of the common stock as used in Instruction 3-D, of Electric Plant Accounts? A. You cannot find those precise words used in there, but the affidavits obviously are doing that, taken as a whole.

[6897] For instance, in the Lee affidavit at one point he said that it was his opinion that if the firm of Lee, Higginson and Company, immediately following the time they received that stock, were going to add or eliminate a partner, thus necessitating a division of the assets, that they would have based that division upon \$25. a share, or upon the stock having a value of \$125,000 one or the other. That is what I mean by saying that the affidavit was determining the cash value of the services or the stock.

Q. Does that mean that Mr. Lee was saying that the stock could be sold to a willing purchaser for that amount of cash at the time of the transaction? A. That is what it means to me.

Q. Was any stock sold for cash at the time of the transaction?

MR. KING: At the time of what transaction?

MR. HALL: Transaction pursuant to which the common stock was issued.

THE WITNESS: You are speaking of common stock now, are you?

By MR. HALL:

Q. Yes. A. Not so far as I know. I could find no record of cash sale at that time. However, that doesn't prove it couldn't have been sold by any manner of means if they tried.

[6898] Q. Nor does it prove it could have been sold? A. That is right. The only reason I have for believing it could be sold at that price is the fact Mr. Lee states in his affidavit.

Q. How do you explain the fact that if the stock could have been sold for cash it was not? A. Because people who had it wanted to hold it and sell it for a bigger cash price. That is obvious.

Q. Why didn't McCall Ferry get cash from anybody at any time? A. Because they got services.

[6899] Q. Are you accepting the responsibility for the determination of the cash value of the securities here in issue? A. May I have that question, please?

(Question read.)

THE WITNESS: Yes, to the extent it was necessary to make a determination I had a part of the responsibility and Mr. O'Connor had the other.

I would like to explain what that responsibility consisted of.

By MR. HALL:

Q. Yes. [6900] A. It consisted of taking the evidences of value, which are mentioned in Exhibits 26 and 27, and selecting, based upon those, a figure at which the stock would be valued for the purpose of the original cost claim.

What I am seeking to explain is that I could not, myself, make a valuation of stock as a financial expert would do it.

Q. Did Mr. O'Connor make the valuation as an expert? A. No, I don't think he did. I think the people who actually made the valuations were Lee, Fisk, Hutchinson, and those people.

Q. What is the division of responsibility between you and O'Connor, in so far as the determination is concerned? A. I don't know just how to describe it. Mr. O'Connor was my superior in the company at that time and he had considerable knowledge and experience in financial matters, and I discussed the evidences we had of value with Mr. O'Connor and also company counsel.

Q. What experience had Mr. O'Connor had in financial matters? A. He had been secretary of the company for a long number of years and had been largely responsible for the handling of the company's financial affairs.

Q. Did that involve the valuing of common stock or any stock? A. I don't know. It involved buying and selling stocks [6901] as investment for the company so I guess you could call that a valuation.

Q. It involved buying and selling as distinguished from valuation of stock? A. It seems to me when you buy something you value it, don't you?

TRIAL EXAMINER: Don't give argumentative answers.

THE WITNESS: I was trying to answer. I didn't mean to be arguing about it. What I was trying to indicate is that when a person makes up his mind to buy, and decides to buy, a share of stock it seems to me he is then and there valuing it.

By MR. HALL:

Q. Will you specify in detail, Mr. Gunn, just what Mr. O'Connor's responsibility was in connection with determining the cash value of the common stock of McCall Ferry Power Company? A. I don't know how to specify it. It was what I have described to you and the value was arrived at in the way I have described it.

Q. For instance, who determined that the cash value of the common stock was \$25? A. It was determined jointly by Mr. O'Connor and myself and by company counsel.

Q. Now you have brought into the picture a third party. [6902] A. No, I mentioned a few moments ago that the discussions relating to the proper value of this stock was had between Mr. O'Connor, company counsel and I.

Q. Who selected the figure of \$25? A. I suppose I had as much to do with it as anybody else.

Q. Does that mean that you selected the figure of \$25? A. I think you can take it to mean that.

Q. Do you mean by your testimony that you checked your figure with Mr. O'Connor and company counsel? A.

I mean we all sat down and discussed it together numerous times. I can't say that I had absolute responsibility for it in that if I had picked a different figure that Mr. O'Connor couldn't have caused me to change it.

Q. But he didn't cause you to change it? A. No, he did not.

Q. Was \$25 the only figure you ever picked?

MR. KING: You mean picked or considered, Mr. Hall?

MR. HALL: We will make it "considered."

THE WITNESS: No, it was not the only figure I considered. I considered figures up as high as \$30 and \$35.

By MR. HALL:

Q. And as low as what? A. I don't recall that I considered any any lower than \$25.

[6903] Q. That means any figure you had lower than \$25 you necessarily rejected? A. It also means any figure I had above \$25 I rejected.

Q. When did you make your cash value determination of \$25? A. I don't recall the date but shortly before the original cost study was completed.

Q. And that would be when? A. Probably early in 1940. I believe we filed the original cost study, as I recall it, in May of 1940.

Q. Mr. Gunn, I don't remember your stating in your qualifications and experience that you have had any experience in determining the cash value of securities. Will you please state what experience you had prior to this proceeding? A. You mean in valuing securities?

Q. Yes. A. None, practically none. I bought a few securities and I sold a few, but my knowledge of it is no more than just the knowledge of a layman.

Q. I believe you have indicated that in determining cash value of securities there were no market prices available to you at all? A. That is right. I couldn't find any.



MR. KING: You are talking about McCall securities?

MR. HALL: Yes.

[6904] THE WITNESS: And McCall common stock also?

MR. HALL: Yes.

THE WITNESS: All right.

By MR. HALL:

Q. Do you know why there were no market quotations available? A. No, except the people who held the common stock didn't want to sell it. That is the only reason I could give. That was certainly true of Harlow. He so testified.

Q. In other words, none of the securities ever reached the market? A. That is my understanding of it, if by "market" you mean a place where they are generally bought and sold.

Q. And that applies to both common and preferred stock? Right? A. So far as I could determine it applies to both.

Q. Did you determine the cash value of the bonds as well as the common stock? A. Well, to the same extent I determined the value of the common stock I determined the value of all of them.

Q. What was the cash value you assigned to the bonds? A. \$900 per \$1,000 bond.

. . .

[6906] Q. As of what date is \$25 the cash value of McCall Ferry common stock? A. I would say at about the same date. Of course, it was the amount of it that was to go for the various services, the commitment for that was made early in March.

Q. 1905? A. Yes. Also, the prospectus on which the project would be built and financed was dated early in March. It would seem to me there would be no difference in the date of valuation between March and June.

Q. At what date did you fix it? A. I didn't have in mind any specific date. I simply had in mind about those dates we have been discussing. As a matter of fact, the only thing I did in fixing the value of a stock was simply to take the valuations fixed by other people and judge what appeared to me to be a reasonable figure based upon all those valuations. For that reason it was not necessary for me to have in mind any particular date other than the fact that I was valuing the stock at the beginning of the enterprise.

Q. In other words,<sup>6</sup> you weighed the evidence available to you and arrived at the \$25 valuation and the \$90 valuation? A. That is right.

MR. KING: Did you say \$90?

[6907] MR. HALL: \$900.

THE WITNESS: And the \$900 you speak of applies to the bonds.

By MR. HALL:

Q. Yes. In other words, the date for the common was between March and June of 1905? A. Yes, I would say that.

Q. As of what date is \$50 the cash value of the McCall Ferry preferred stock? A. The same date.

Q. Would you say that the \$900 received for the bonds is based upon the cash received for the bonds? A. May I have that question, please?

(Question read.)

By MR. HALL:

Q. In other words, would you say that it is based upon the evidence of the cash received for the bonds? A. In part, yes.

Q. What else was the \$900 valuation based upon? A. Well, it was based upon the fact that Harvey Fisk had the right or the obligation, as Fisk described it, to repurchase the bonds at 900, and it was based upon Harlow's testi-

mony that while he didn't know whether he could sell the bonds for 900 that he would not sell them for less than 1,000, and based on the fact that Bertron, Storrs & Griscom, as I [6908] recall, when they entered them in their records entered them at 90.

Q. Do you know the date of Harlow's statement? A. The latter part of 1906, I believe, and it is also a fact that when Mr. Harlow gave that testimony, in which he made that statement, that he was testifying in a situation where it would be in his interest to have stated the minimum figure he could for those bonds.

Q. That is your own interpretation of the issues in the case. Is that right, Mr. Gunn? A. Well, it is my interpretation of it but it seems a rather obvious interpretation.

TRIAL EXAMINER: Where is that, Mr. Witness?

THE WITNESS: Beg your pardon?

TRIAL EXAMINER: Where is included Harlow's testimony?

MR. KING: Item 21 of Exhibit 27.

By MR. HALL:

Q. Referring to Exhibit 26, page 47, paragraph 2, isn't it a fact that Mr. Harlow indicated in his testimony that he couldn't get \$90 cash for the bonds? A. He said he did not think he could.

[6909] Q. Nevertheless, he said he was not willing to part with it for less than \$100, is that right? A. Less than one thousand.

Q. Because he was thinking in terms of its future worth to him? A. I don't know what he was thinking of.

Q. When you use 90 your reference is to \$100 and when you refer to \$900 the relationship is to \$1,000. Is that right? A. Yes, always speaking of the bonds.

Q. In other words, bonds are usually recorded on the basis of \$1,000 or \$100 units? A. Yes.

Q. Isn't it a fact that when the bonds, preferred and common stocks were issued the cash received for the bonds was the only cash received for any of the McCall Ferry Power Company securities?

THE WITNESS: May I have that question, please?

(Question read.)

THE WITNESS: Yes, I believe that was the only cash received, but it was not the only thing of value received.

By MR. HALL:

Q. In your opinion? A. In my opinion, yes, sir.

Q. If, as you say, the preferred stock had a cash value [6910] of \$50 can you explain why it was not sold at that price rather than being issued as bonus stock? A. Well, it seems to me there were several reasons.

Q. Such as? A. The people who had the money which was sought for the purpose of developing the property, when they subscribed to that bundle of securities, and I refer to the \$1,000 bond and the \$450 or \$500 worth of preferred stock, they were doing two things:

They were parting with \$900 in cash and they were then and there assuming a very substantial risk of losing it, and those two together seemed to me to be the reason why it was necessary to furnish preferred stock which did have a value with the bonds in order to make the transaction.

Q. The assumption of risk, Mr. Gunn, applied both to the bonds and stock? A. Yes, to be sure. It applied to everything. The risks applied to the enterprise.

Q. But the assumption of risk as to the bonds was of a lesser degree. Is that right? A. The assumption of risk as to the bonds was less than the risk on other securities.

Q. Do you know why that was so? A. By the preferences, I suppose.

Q. That was because it was secured by the property. Is [6911] that right?



MR. KING: You mean the bonds were secured by the property.

MR. HALL: Yes.

THE WITNESS: That is what I had in mind when I mentioned the preferences.

By MR. HALL:

Q. But there was nothing at all which would modify the risk of the preferred?

THE WITNESS: May I have that question?

(Question read.)

THE WITNESS: I don't believe I understand what you mean.

By MR. HALL:

Q. Well, there was no protection to the preferred stock as in the bonds? — A. Not as much but there was the same protection to that preferred stock as there is to any other preferred stock.

TRIAL EXAMINER: As of the time the preferred was issued all property owned by the company in toto was not equal to the face value of the bonds. Is that true?

THE WITNESS: May I have that question?

(Examiner's question read.)

THE WITNESS: It seems to me, Mr. Examiner, McCall Ferry Power Company thought it was.

MR. HALL: What is that answer, please?

[6912] By MR. HALL:

Q. Then, Mr. Gunn, why is there a discount on the bonds involved? — A. Because of the risk of the enterprise.

Q. But if the value of the property was the equivalent of par, they should have gotten par for the bonds. Is that right? — A. I think there is some confusion here. The

Examiner asked me a question referring merely to the par value of the bonds. Now we seem to be discussing the value of the total securities outstanding.

Q. But if there was an equivalence between the bonds and the property they nevertheless should have gotten par for the bonds. Is that right?

THE WITNESS: May I have that question, please?

(Question read.)

THE WITNESS: I don't know, but I shouldn't think so.

By MR. HALL:

Q. What was the outstanding capitalization of McCall Ferry Power Company as of June, 1905, in toto?

MR. KING: Was that question the capitalization of the Company or the outstanding securities?

MR. HALL: Outstanding securities is what I had reference to, Mr. King.

THE WITNESS: It seems to have been between seventeen [6913] and eighteen million dollars.

TRIAL EXAMINER: Can you break that down into bonds and the two classes of stock?

THE WITNESS: Yes. There were \$8,483,000 principal amount of bonds; \$4,116,500 principal amount of preferred stock; \$4,999,000 shares of common stock. I suppose that common stock should be five million dollars because the missing shares are the qualifying shares from the figure I gave you. That should be five million dollars.

By MR. HALL:

Q. The total of that is approximately \$17,500,000.  
A. Yes, sir.

TRIAL EXAMINER: Where did you get that data?

THE WITNESS: Page 41 from the agreement between McCall Ferry Power Company and Susquehanna Contracting Company at the top of the page.

By MR. HALL:

Q. Mr. Gunn, what property did McCall Ferry Power Company own at that time which could be used to satisfy claims totalling 17½ million dollars?

MR. KING: If your Honor please, I object to the form of the question. I think this witness has indicated he is not a lawyer. He can indicate what property they had, but the balance of the question calls for a legal conclusion.

TRIAL EXAMINER: Read the question, please.

[6914] (Question read.)

TRIAL EXAMINER: I think the witness can answer that question. Objection is overruled.

THE WITNESS: It seems rather obvious to me that they didn't own enough to satisfy any such claim as that.

By MR. HALL:

Q. How much do you think they owned, Mr. Gunn?

A. I think they owned enough to support the valuation that I have placed on the bonds, the preferred, and the common stock.

Q. Are you saying that the property which passed to McCall Ferry Power Company had a valuation of seventeen million dollars? A. No, sir.

Q. How much did it have? A. I don't know [that] I valued it. But the value that I placed on the securities is what we have been discussing this morning, \$900 for the bonds, \$50 for the preferred stock and \$25 for the common stock.

Q. And the value for the preferred and common is based upon the valuation of services and not property. Is that right? A. That was the means by which we arrived at the value of the shares, yes, in part. It was also, in part, on the property.

[6915] TRIAL EXAMINER: Mr. Witness, if you applied your valuation to the capitalization you gave a moment ago, what would your result be?

THE WITNESS: You would get nine-tenths of the bonds, one-half of the preferred stock, and a quarter of the common stock.

By MR. HALL:

Q. You are saying that the value of the securities is represented by services and not property. Is that right?

THE WITNESS: May I have the question, please?

(Question read.)

THE WITNESS: No, I don't think that is what I am saying.

By MR. HALL:

Q. What are you saying? A. I am simply saying that because of the peculiar circumstances here it was necessary in arriving at the dollar equivalent of the stock to value services exchanged in certain transactions because that was the only evidence of it. But it doesn't follow from that that the valuation so placed upon it arises out of the services, at least not totally out of the services.

Q. What property did Lee, Higginson and Company transfer to McCall Ferry for the securities they received? A. I don't think they transferred any property. They [6916] rendered services for the securities they received.

Q. How about Harvey Fisk and Sons? A. I think the same thing is true of Harvey Fisk and Sons, except in addition to financing services he rendered managing services.

Q. That is your contention? A. Yes, sir, that is what Mr. Fisk says.

Q. How about Bertron, Storrs and Griscom? A. I think they rendered largely financial services.



Q. What property did the bondholders who received the bonus preferred stock transfer to McCall Ferry Power Company?

THE WITNESS: May I have that, please?

(Question read.)

THE WITNESS: They transferred cash and assumed risks.

By MR. HALL:

Q. And that necessarily means they transferred no property? A. What do you call property?

Q. Except for the cash. A. Yes, I suppose the cash is the only tangible property they transferred, but they rendered a valuable service to the enterprise in the shape of assuming the risk in parting with their \$900.

Q. It is a fact that the only two individuals who [6917] transferred property to McCall Ferry were Hutchinson and Harlow McGaw. Right? A. What do you mean by "property" in that question? I thought we decided a moment ago that money was property.

Q. With that qualification.

THE WITNESS: Now may I have the question?

TRIAL EXAMINER: Yes.

(Question read.)

MR. KING: You mean at the time of the early development and issuance of the securities?

MR. HALL: June, 1905.

THE WITNESS: Yes, as I recall all the property came in through those two individuals.

By MR. HALL:

Q. What do you claim, Mr. Gunn, is the total original cost of McCall Ferry as of June, 1905?

THE WITNESS: May I have that question, please?

(Question read.)

THE WITNESS: You mean cost of, or cost to?

By MR. HALL:

Q. What do you claim the total original cost of the McCall Ferry Power Company property is as of June 1905?

A. You are speaking now of these two property transactions?

Q. No, I am speaking of all property which McCall [6918] Ferry Power Company had as of the date of June, 1905. A. I don't know. I never computed it. If you want to know what the claimed original cost of the Hutchinson and Harlow-McGaw transactions are, I can tell you that. I didn't make a determination as of 1905.

Q. Wasn't that one of the determinations you had to make in reaching your conclusion in this case? A. Not if I understand your question it was not.

Q. Just what did you understand my question to mean?

A. I thought you were asking me what was the total original cost of McCall Ferry Power Company in June of 1905.

Q. Up to that date. That is what I was asking you.

A. I told you that I had not computed the cost as of that date, or at least I do not have it before me now.

Q. Will you enumerate what property McCall Ferry Power Company had as of June, 1905, in general terms?

A. What do you mean by "property"? Are you including the money in it now or not?

Q. Yes, I am including the money. A. Well, they had the property they obtained from Hutchinson. They had the property they obtained from Harlow-McGaw. They had \$6,400,000, I believe it was, that had been raised to construct the project.

Q. That is the loan you are talking about from Knickerbocker Trust Company? [6919] A. No. They had available to them the proceeds of the bonds that had been subscribed to.

Q. All right. A. And they had a very great intangible element of property, shall we say, in the fact they had the financing assured and all the water power rights necessary to go ahead and complete the project.

Q. What original cost did you put on Hutchinson's properties at the time of their transfer to McCall Ferry Power Company?

THE WITNESS: May I have the question, please?

(Question read.)

THE WITNESS: \$1,221,000.

By MR. HALL:

Q. What original cost did you put on the Harlow-McGaw properties at the time of their transfer to McCall Ferry Power Company? A. \$450,432.

Q. What original cost, if any, did you put on the Pullen transaction? A. \$13,772.22.

TRIAL EXAMINER: Where does that come in the list of things you gave a moment ago? Is that among the intangibles or is that something which was omitted?

THE WITNESS: I think that is something we missed a [6920] moment ago, but it should have been included, Mr. Examiner.

Do you want the other things of value they got?

MR. HALL: I beg your pardon?

THE WITNESS: Do you want the other things of value they got?

By MR. HALL:

Q. I will ask you the questions as we go along, Mr. Gunn.

What did 90 per cent of the bond subscriptions amount to dollarwise? The bond subscription according to my information, Mr. Gunn, was \$8,075,000.

TRIAL EXAMINER: As of June, 1905?

MR. HALL: Yes.

TRIAL EXAMINER: Were there any deferred subscriptions still outstanding at that time?

MR. HALL: They were all sold at 90, Mr. Examiner, because of the loan arrangement which had been made with Knickerbocker Trust Company.

TRIAL EXAMINER: All right.

MR. HALL: In other words, Knickerbocker Trust Company advanced funds—

TRIAL EXAMINER: Against the deferred subscriptions?

MR. HALL: Yes.

TRIAL EXAMINER: On the basis of \$100?

MR. HALL: On the basis of 90, less the initial [6921] advancement made by the subscribers themselves.

THE WITNESS: May I have the question, please?

(Question read.)

THE WITNESS: \$7,267,500.

By MR. HALL:

Q. Mr. Gunn, by adding the amounts of \$13,772, the \$1,221,000, the \$450,000, and the \$7,267,000, we arrive at a total of \$8,951,772, which represents all the physical property or cash available to McCall Ferry Power Company at June, 1905. Is that right?

THE WITNESS: May I have the question, please?

TRIAL EXAMINER: Yes.

(Question read.)

THE WITNESS: Yes, it represents it in the form of original cost, but that doesn't seem to me to represent all the assets of McCall Ferry Power Company.



By MR. HALL:

Q. What other assets, Mr. Gunn, do you have in mind which could be sold for cash? A. You mean McCall Ferry Power Company could sell for cash?

Q. That is right. A. Water power rights.

Q. The water rights you refer to are included in the Harlow-McGaw and Hutchinson properties. Is that right? [6922] A. Yes, but there is a vast difference in the value of water power rights sold as separate parcels or small groups of parcels than it is when you bring them together and have assured financing and an assured market. At least I am told there is a difference. I am not a water-rights expert, but at least that is my understanding of it.

. . .

[6923] By MR. HALL:

Q. Mr. Gunn, you were talking about selling the property in your last answer in connection with its being a successful enterprise at the time of sale. Is that right? A. Let's have the answer read. I am not aware I proposed to sell it.

TRIAL EXAMINER: Read the answer, please.

(Answer read.)

THE WITNESS: If you note there I was not suggesting a sale by McCall Ferry Power Company. The word "sale" used in [6924] that question refers to Hutchinson and Harlow and McGaw's sale to McCall Ferry Power Company.

By MR. HALL:

Q. In other words, you are talking in terms of value of a successful enterprise based upon prospective earnings?

MR. KING: You mean solely based upon prospective earnings, Mr. Hall? The question is a little ambiguous.

MR. HALL: Will you answer the question, Mr. Gunn?

TRIAL EXAMINER: Read the question, please.

(Question read.)

MR. KING: I object to the question on the ground it is ambiguous, if Your Honor please.

MR. GOLDBERG: To counsel?

MR. KING: Yes.

TRIAL EXAMINER: What is ambiguous about that?

THE WITNESS: The thing ambiguous to me is that in a successful enterprise the earnings are not prospective. That is one thing ambiguous about it.

By MR. HALL:

Q. And it is earnings that give it value? A. Beg your pardon?

Q. It is the earnings that give it the value? A. I don't know you could say it is the sole reason for its having a value. If it had no prospect of having any earnings then it wouldn't have very much value.

[6925] Q. Now, Mr. Gunn, what did the bondholders get in the foreclosure proceedings—strike that, please.

What was paid in the foreclosure proceedings for the McCall Ferry Power Company property?

MR. KING: I object to that question as being wholly irrelevant and immaterial.

TRIAL EXAMINER: On what grounds?

MR. KING: To establish the value in 1905.

TRIAL EXAMINER: When was this foreclosed? 1909?

MR. KING: A number of years later, 1909 or 1910. I don't recall the exact date.

TRIAL EXAMINER: The project then was still uncompleted?

MR. KING: Yes, sir.

TRIAL EXAMINER: The objection is overruled.

THE WITNESS: Will you read the question, please?

(Question read.)

THE WITNESS: \$2,000,000, I think, was one of the payments. Then, of course, there was an exchange of securities. I don't know just which one of those things you would call payment in the foreclosure proceedings. I don't think that has any significance because when Barnum went in to bid the property, as I recall it, he was authorized by the bondholders' committee that if there was a competitive bid made to bid up to the face value of the bonds plus accrued interest plus all expenses that had been incurred up to that time.

° [6926] By MR. HALL:

Q. How much is that? A. I don't know offhand.

Q. But the foreclosure price was \$2,000,000, period? A. I understand that was the bid, \$2,000,000, and nobody bid against them. Hutchinson later complained bitterly, and so did Sanderson and Porter, that McCall Ferry Power Committee moved so fast they wouldn't give them an opportunity to organize any opposition.

[6935] Q. But there were no earnings created by the financing itself? A. I don't quite follow your question. Are you saying this: That the mere act of financing standing alone did not create earnings? If that is what you are asking me the answer obviously is that it didn't, except to the extent they deposit the money in the bank and get some interest on it.

Q. Other than the interests there were no earnings. A. Not out of that item standing alone. The earnings would come out of the combination of all these things I mentioned.

Q. Were there any earnings out of the water power rights to which you have referred, Mr. Gunn? A. Not standing alone. Separate from the other items I mentioned I don't suppose there would be any earnings out of

it. They would be valuable water power rights that could be sold, of course, but undeveloped water power rights don't have any earnings ordinarily.

Q. There could be no earnings until the project was constructed and successfully operated? A. That is correct, there could be no actual earnings until that time.

Q. And that was, of course, all in the future in 1905. [6936] A. You mean prospective completion?

Q. Yes. A. Yes, obviously.

Q. And the earnings as well. A. Yes. Yes, I think that is right.

Q. There was absolutely nothing available in 1905 to pay dividends on the stock. Is that correct? A. I don't think there was anything with which you could properly have paid dividends.

. . .

[6976] Q. How did Pliny Fisk use Part 10 of Exhibit 27 in arriving at the cash value? A. I don't know. You will have to ask Mr. Fisk.

Q. Then the fact is that you do not know how Fisk, Hutchinson, Lee, and any others to whom you submitted the documents, used them in arriving at their conclusions as to cash values?

THE WITNESS: May I have the question, please?

(Question read.)

MR. KING: Mr. Hall, by the words "How they used them", you mean what weight they gave to particular documents?

MR. HALL: Simply how it entered into their conclusions as to cash value.

[6977] THE WITNESS: I obviously do not know. I couldn't look into their mental processes.

By MR. HALL:

Q. As a matter of fact, Mr. Gunn, you don't even know what documents entered into their considerations. Right?

A. I do know what documents I gave them.



Q. But that is not the—— A. But I do not know what weight they gave to the various documents. Certainly I do not.

Q. Or whether they even used them in arriving at their values? A. No, I don't know that. As I have told you, I wasn't present when Mr. Fisk came to his conclusions. I wasn't present when Mr. Hutchinson came to his. As a matter of fact, I don't know as I was present when any of them came to their conclusions. So I can't tell you what the mental process was.

. . .

[6981] Q. I am merely asking you how much profit you considered the bankers got. A. I didn't have to consider any profit myself. I assumed that Fisk and Lee and these other people considered it when they made the valuation.

Q. Didn't you say that the profit the bankers got would have a bearing on the cash value? A. Yes, it seems to me it would. I made that [6982] speculation, yes.

Q. Didn't you also state that you applied an independent judgment as to the determination which Fisk and the others made? A. No, sir, I don't think I stated that. I didn't intend to.

Q. Didn't you say, for instance, that you had considered part 2 of Exhibit 27? A. I don't think so. What I was saying at that time is what would have to be considered to arrive at an appraisal of this stock. I told you earlier this morning, I think, that between Mr. O'Connor and counsel and myself we simply arrived at a valuation from the opinions that had been given by people who were present at the time and in that in confirmation of those, or in order to assure myself that they at least looked reasonable to me, I considered what would be the earnings of McCall Ferry Power Company.

Now, in order to consider that you have to have the facts included in other parts of Exhibit 27 than those parts which we mentioned.

. . .

[6986] Q. Is Mr. Lee, who signed part 8 of Exhibit 27, still alive? A. Yes, sir. He was according to the last account I had of him. I haven't heard of his dying.

Q. When was that, Mr. Gunn? A. Perhaps a year ago or some such time.

Q. How old is Mr. Lee? A. I can't say precisely. I can probably find out. I would say he is in his eighties. He was a rather old man whom I would judge to be well in the seventies when I obtained from him the affidavit which is Part 8 in Exhibit 27. That was some eight years ago. So he is rather advanced in years now.

Q. Mr. Gunn, upon which statement included in Exhibit 27 did you place the most reliance in reaching your conclusion [6987] as to cash value of common stock? A. May I have that question?

MR. KING: Of the McCall Company?

MR. HALL: Yes.

(Question read.)

THE WITNESS: I don't believe I could designate a single one. But I would say this: I placed considerable reliance in the statement of Mr. Lee, Mr. Fisk, and Mr. Hutchinson.

By MR. HALL:

Q. Did you consider that those three were all equally reliable? A. I don't think I ever graded them.

Q. What is that? A. I don't think I ever graded them as to their reliability.

Q. Did you use Hutchinson's determination of cash value of McCall Ferry common stock? A. Did I use it?

Q. Yes. A. I took it into consideration, yes.

Q. And then rejected it, right? A. No, I wouldn't say I rejected it. I wouldn't say any of them were rejected.

Q. What cash value did Mr. Hutchinson place on the common stock in his affidavit which is part 1 of Exhibit 27? [6988] A. May I have the question, please?

(Question read.)

THE WITNESS: He said he believed it was worth from 20 to \$30 a share.

By MR. HALL:

Q. What did Mr. Lee say in his affidavit which is Part 8 of Exhibit 27? A. \$25 per share.

Q. What cash value did Mr. Fisk arrive at in his statement which is Part 9 of Exhibit 27? A. For the common stock?

Q. Yes. A. He sets forth in that Exhibit figures from which it is possible to compute \$18 a share for the common stock.

MR. HALL: Would you read back the last answer?

(Answer read.)

By MR. HALL:

Q. How did the \$18 cash value assigned by Fisk to the common stock assist you in determining the \$25 cash value which you used? A. In the same way the others did. It was a fact to be taken into consideration.

Q. Just how did you take it into account? A. I just considered all of the estimates of value I had and came to the conclusion that \$25 a share was the proper [6989] figure.

Q. By what process did you get from \$18 to \$25 per share? A. By the process of considering what Hutchinson had said the value was, what Lee said the value was, what Fisk said the value was, what Hopkins said he thought the value was. I believe that is all of them.

Q. What did Mr. Hopkins say the cash value of the common stock was? A. Mr. Hopkins stated in Part 24 of Exhibit 27 an amount for the legal services of Coudert Bros., which was equivalent to a \$30 per share value on the 1,000 shares of stock they received for their services.

Q. Didn't Mr. Hopkins also point out, "I am not qualified to place a value on that stock as such"? He makes

that statement, does he not, on page 201 of Exhibit 27?  
A. May I have the question, please?

(Question read.)

THE WITNESS: Yes, I think Mr. Hopkins felt the same about it as I do.

By MR. HALL:

Q. You mean by that you are not qualified to place cash value on the McCall Ferry common stock? A. Independently of my own ability? I certainly would not be qualified to do it.

[6990] Q. How were you able, Mr. Gunn, to apply any independent judgment to what Mr. Fisk, Lee and Hutchinson said when you just stated you didn't think you were qualified? A. In the same way anyone else would do it. In the same way the Commission would do it, I think. I considered the figures they gave me and picked the ones which in my judgment were most appropriate.

Q. Does that mean you don't think the Commission is qualified to pass on this determination? A. I was not saying that at all. I didn't understand the Commission were financial experts. That is the reason I thought it was necessary to bring financial experts down to testify for them once in a while.

Q. Mr. Gunn, who was the financial expert who assisted you in determining the \$25 cash value for the common stock? A. Mr. O'Connor had some knowledge of financial matters. It was discussed with company counsel and among the three of us we arrived at that conclusion.

Q. When you used a \$25 cash valuation for the common stock you necessarily rejected Fisk's valuation of \$18 per share. Right? A. No, I don't so term it. There were three or four different values stated by different people and in taking them into consideration and arriving at a single value it automatically makes that value different from at least two [6991] of the others, but I don't think that constitutes rejecting them.



Q. If you thought that Fisk's \$18 valuation was the correct figure you would have used that \$18 figure. Isn't that right? A. Not necessarily. I don't think so. I think you assumed in that question that I had no other evidence but just Fisk's, haven't you, or are you still assuming I have these other people's opinions?

[6992] Q. Assuming you had the evidence but you concluded that Fisk was the best evidence of cash value of common stock, you would have agreed with Mr. Fisk. Is that right? A. Do you also include in that assumption that the others were worth less?

Q. No, just the thought that Fisk's statement was the best evidence. A. No, I think I would have considered them all. That is if I had not come to the conclusion that the others were worth less.

Q. How did Mr. Hutchinson's twenty to thirty dollar valuation assist you in arriving at a \$25 cash valuation for the common stock? A. In the same manner in which the others did. It was one factor to be considered and weighed in reaching a conclusion.

Q. Can you explain how you considered Mr. Hutchinson's valuation? A. No, sir, I cannot. I can not describe my mental processes in reaching the conclusion.

Q. You cannot explain how you weighed it? A. No, sir.

Q. It is a fact, is it not, Mr. Gunn, that the determination of \$25 that you did use coincided with Mr. Lee's determination? [6993] A. Yes, and it also fell within the range of Mr. Hutchinson's determination.

Q. It fell—— A. Right square in the middle of the range.

Q. Are you saying what you did was to take the average? A. I may have done some averaging. As I said, I can't describe my mental process of how I came to the conclusion of \$25 a share. It just seemed to me that from a consideration of all the facts the \$25 was a proper figure. I have to say again that I am not a financial expert.

[7021] MR. KING: \* \* \* Lastly at pages 6816 and 6817 we were requested, as we understand it, to produce so-called participation, which is a list of documents submitted to Hutchinson and Fisk. I now hand Mr. Hall copies of those two documents.

I would like to say in connection with the last documents I have handed to Mr. Hall that they are the only copy which we have. We would like to have them returned as soon as possible.

MR. HALL: Receipt is acknowledged of these documents, Mr. Examiner, and they will be returned intact.

By MR. HALL:

Q. Mr. Gunn, why didn't you use \$18 as the cash value of the McCall Ferry common stock? A. Because I reached the conclusion that \$25 was the proper value to use.

Q. Why didn't you consider the \$18 cash valuation proper? A. Because I had several valuations and I considered them all and arrived at the conclusion that \$25 was proper.

[7022] Now, as I recall, the valuations I have ranged from \$18 to \$30. It was necessary to pick a single valuation of the stock and it was therefore a mathematical result, and in picking any single valuation it would be different from the others that varied from it.

Q. Why didn't you pick the \$30 valuation? A. For the same reason I didn't pick the \$18 one.

MR. KING: Would you excuse me just a minute, Mr. Hall.

You asked for another bit of homework which I forgot to make a statement in connection with.

At Pages 6816 and 6817 I have stated that I have handed you participations of Hutchinson and Fisk in response to the request you made at those pages.

MR. HALL: Yes.

MR. KING: You will note from examining the pages that you also asked, in addition to the participations submitted to Hutchinson and Fisk, the ones submitted to Hopkins. I forgot to say that we do not have any participation submitted to Hopkins because the information in Hopkins' statement was limited to matters in his own firm's file.

MR. HALL: In other words, you did not submit any documents at all to Mr. Hopkins upon which he based his statement in part or in whole?

MR. KING: Correct, because he based his statement upon the documents in his own files.

[7023] MR. HALL: How about Mr. Lee?

MR. KING: You didn't ask us for Mr. Lee. We have a participation submitted to Mr. Lee.

MR. HALL: Will you submit those covering Mr. Lee's participation also?

MR. KING: Yes.

TRIAL EXAMINER: What is the meaning of the word "Participation"?

MR. KING: Simply means a list of the documents which were submitted to the affiants Hutchinson, Fisk, and Lee upon which they made up their minds and finally prepared and executed affidavits in connection with.

TRIAL EXAMINER: Are they the documents which were presented to each one of them for affidavits and upon which they based all of the material contained in each of the affidavits?

MR. KING: Would you like to look at them?

TRIAL EXAMINER: I am afraid I couldn't get much out of them if I looked at them right at this moment.

MR. KING: Those so-called participations, if Your Honor please, contained on top of them a summary nar-

rative of the facts; and, secondly, exhibits relating to the particular party's participation in the project. They do not contain all of the exhibits in the company's files, as Mr. Gunn heretofore has stated.

TRIAL EXAMINER: You used the word "participation" then, [7024] in connection with the project?

MR. KING: Correct.

MR. HALL: Serving as the basis for refreshing recollection, is that right, Mr. Gunn?

THE WITNESS: A part of the basis.

By MR. HALL:

Q. What is the other part you refer to? A. Well, for example, in the case of Lee, Higginson; they in their own files had some additional information in addition to what was supplied in the participation.

Q. What additional information did Hutchinson have other than that which you furnished him and which is contained in these documents Mr. King has turned over to me?

A. In the case of Mr. Hutchinson he had access to a very considerable amount more than that because he worked with me off and on for a period of eight or ten months, I believe, during which we devoted several days to conferences and a considerable part of that time was spent in reviewing a large volume of information in the company's files, of which the portion in the participation appeared to be the more important items.

[7025] Q. I believe you have testified Mr. Hutchinson had no personal files relating to the early history of the McCall Ferry Power Company? A. That is correct.

Q. Then he relied solely upon the information in the company's files, right, plus his recollection? A. Plus his recollection; yes.

Q. All right. A. But what I am seeking to explain is that all of the information from the company's files which he reviewed is not in that participation.



MR. HALL: Mr. King, did I correctly understand you to say a few moments ago that Hopkins, in preparing his affidavit, which is Part 24 of Exhibit 27, relied solely upon his recollection and the information contained in the files of Coudert Brothers and was not submitted any participation in connection with the preparation of that exhibit?

MR. KING: That is my understanding.

By MR. HALL:

Q. Mr. Gunn, before these documents were submitted to the individuals we have been discussing, speaking of the participations, had it been ascertained whether they had documents of their own upon which they could rely? A. Yes, I think that had been ascertained.

Q. What did you ascertain in that connection? [7026] A. It varied from one to another. In the case of Mr. Lee I ascertained that he had a considerable amount of information in his own files. Just precisely how much and what the information consisted of I never knew except that he produced certain documents in support of his statement, gave me copies of them, and I think for the most part they are included in Exhibit 27, and also in the Lee, Higginson participation.

In the case of Hutchinson, he had no personal documents of his own. He attempted to secure from the successor to Continental Trust Company in New York, I believe, the records of his bank account through which the cash paid to him was disbursed in satisfaction of his obligation to other people, and advised me that it was impossible—that that bank long since had destroyed the records and he could not obtain that information. Therefore, the information which Hutchinson had available to him was what was supplied him from our company's files, a part only of which is included in the participation, and that was supplemented by his recollection.

Now, as regards Fisk, I don't know just what information he had before him, but I am sure he had more than I submitted to him. I believe that for this reason: He was represented by a personal counsel by the name of Wilton Cole, and he had a son who, working with Mr. Cole, undertook to find as much information as possible about the McCall Ferry participation, [7027] and it was my understanding that they found some information in the Pliny Fisk library at Princeton University. I don't know whether it was the same that I had made available to him or whether it was additional, but it was my understanding from Mr. Cole that it was not of primary importance.

Q. I don't understand your last statement there, Mr. Gunn, in view of the fact that Mr. Fisk, at the bottom of page 70 and top of page 71 of Exhibit 27, states, "Their search", referring to the search made by his son and Mr. Cole, "established the fact that all of the records of Harvey Fisk and Sons relating to the McCall Ferry Power Company deal had been destroyed." A. Well, I think that was in general true, but it was my understanding that there was some information in the Fisk library at Princeton.

Q. Are you in a position to state that it is a fact that Fisk relied upon information which you did not furnish him through Cole? A. No, I personally cannot state that as a fact that I know.

Now, as for Mr. Hopkins, I did not supply him any information because the total connection with his firm, about which I ever had any information, came from the files of Coudert Brothers, and he therefore had the information.

Q. Then no statement was submitted to Hopkins? [7028] A. No; that is right.

Q. Mr. Gunn, I find in the participations turned over to me by Mr. King, which were submitted to Fisk, pencil notation in the margin. Whose handwriting is that? A. I don't know. I have not looked at them in several years. May I look at them? I might be able to identify them.

Q. I refer you to these notations in the margin. A. I cannot state for certain, but they look like the handwriting of Mr. Wilton D. Cole. I can state for certain they are not mine.

[7036] By Mr. HALL:

Q. Can you answer the question, Mr. Gunn? A. I don't understand what you mean by "distillation", Mr. Hall.

Q. I mean the \$25 cash valuation is the result of a composite consideration of the opinions of [7037] the four individuals to whom I have referred. A. It is primarily that, but it is also based upon such consideration as Mr. O'Connor and company counsel and myself could apply to those figures, and it is also obviously affected by the fact that at the time the stock was given the company seemed to have very good prospects of earnings in the future.

Q. Did you consider the four opinions of equal reliability? A. I don't know. I think perhaps I thought that the opinions of Lee and Hutchinson and Fisk were probably somewhat more reliable than Hopkins.

Q. Did you think that the opinions of Lee, Hutchinson and Fisk were of equal reliability? A. I think I probably did. I never recognized any substantial difference in their reliability.

[7038] By Mr. HALL:

Q. Did you contact persons other than Lee, Hutchinson, Hopkins and Fisk for the purpose of securing valuations of the common stock of McCall Ferry Power Company?

THE WITNESS: May I have that question, please?

(Question read.)

THE WITNESS: No.

By MR. HALL:

Q. Did you contact other persons for the purpose of securing valuations on the preferred stock? [7039] A. No.

Q. Mr. Gunn, what association did Mr. Lee have with that portion of the McCall Ferry financing which was done by Lee, Higginson and Company? A. I don't know.

Q. Does Mr. Lee make any statement in his affidavit about that? A. You mean about his association?

Q. Yes. A. Nothing other than he gives a recitation of facts there which seem to indicate his familiarity with it.

Q. Have you located any documentary evidence showing direct participation by Mr. Lee in the McCall Ferry financing?

MR. KING: What do you mean by "participation", Mr. Hall?

MR. HALL: Direct connection?

THE WITNESS: Mr. Hall, that doesn't help me much. There are all sorts of evidence that the firm participated in it. He was a member of the firm.

By MR. HALL:

Q. Did you find any correspondence addressed to Mr. Lee or written by Mr. Lee relating to the financing of the McCall Ferry deal? A. I don't recall that I did. I never examined Lee, Higginson's files. However, I do recall that Mr. Lee told me [7040] that he had been directly connected with it in the instance of the conference which we mentioned last week.

Q. Why isn't that last information that you referred to contained in Mr. Lee's affidavit, Part 8 of Exhibit 27? A. I suppose he didn't think it was necessary to put it in there. That is the only reason I know. After all, everything couldn't be put in the affidavit.

Q. Wouldn't that be a material fact which should be included in Mr. Lee's affidavit? A. I don't think so. I think from the affidavit it is obvious.



Q. How could you judge the weight of his statements without any such statement as to direct connection with McCall Ferry financing? A. Well, because he was a member of the firm, and the firm handled it, or handled a part of it.

. . .

[7041] By MR. HALL:

Q. Mr. Gunn, do you consider Lee's statement to you of direct participation a material fact? A. Prior to this cross-examination I didn't. But inasmuch as it has become of such acute interest to you it is beginning to look like it would have been desirable for it to be in there.

Q. Even prior to the cross-examination didn't you consider that it had a bearing on the weight to be attached to Mr. Lee's statement? A. No, I didn't think it had any bearing.

Q. What were Mr. Lee's duties and activities in connection with the McCall Ferry financing? A. I don't know.

Q. Does Mr. Lee refer to his duties and activities in connection with the McCall Ferry financing in his affidavit? A. I don't think so; not as I recall it.

[7042] Q. Isn't it a fact that Mr. Gardiner Lane represented Lee, Higginson and Company in handling the McCall Ferry affairs? A. As I understand it, Mr. Gardiner Lane was the partner particularly responsible for the McCall Ferry business. That doesn't seem to me, however, to preclude anybody else in the firm knowing anything about it.

Q. Is Mr. Lane dead? A. That is my information that he is.

Q. Do you know when he died? A. Some time prior to the time I went to Mr. Lee to get this statement, or I would unquestionably have gone to Mr. Lane.

. . .

[7053] By MR. HALL:

Q. Was July 10, 1939, the earliest date when you were aware of Mr. Lee's valuation of the common stock? A. Yes, I think it was at least that early. I think [7054] he mailed it to me and I received it a few days later as I recall.

Q. Was Mr. Lee's determination of the cash value of the McCall Ferry common stock made to assist you in determining the original cost of the McCall property? A. May I have that question?

(Question read.)

THE WITNESS: Yes, sir, and I suppose for any other purpose we might need the cash value.

By MR. HALL:

Q. Had Mr. Lee made any previous valuation of the McCall Ferry common or preferred stock? A. Not that I know of.

Q. Did you ask Mr. Lee if he had made any previous valuation of the McCall common or preferred stock? A. No, I don't recall that I did.

Q. Didn't you think a previous valuation of the stock made by Mr. Lee would be pertinent to your determination? A. Yes, but I had no reason to suspect he had ever been asked to make another one.

Q. Did you ask Mr. Lee to make sure he had never made such valuation? A. No, but I asked him to value it. I assumed if Mr. Lee had made a valuation I would have heard about it. I know Mr. Lee did make a very thorough study into other [7055] projects he financed about this time, and I certainly would assume that if he previously valued the securities of McCall Ferry Power Company they would have been a part of the thing he considered.

Q. Was the risk assumed and the sacrifices made in connection with the projects analyzed by Lee the same as the risk assumed and the sacrifices made in connection with the McCall Ferry project?

MR. KING: May we have that question again, please?

(Question read.)

THE WITNESS: I assume they were as nearly as he could find from his firm's records. It was my understanding he endeavored to pick the financings that were most nearly comparable to those of the type of McCall Ferry Power Company.

As I recall it, one of the company's—

By MR. HALL:

Q. But can you state—

MR. KING: Let him finish.

MR. HALL: I am sorry. I thought he was through.

THE WITNESS: As I recall it, most of the companies were water power companies. I recall Colorado River Power Company and Washington Water Power. Of my own knowledge I don't know how comparable it was.

By MR. HALL:

Q. Can you state it was the fact Mr. Lee even considered [7056] risk assumed and sacrifices made in arriving at his valuation of the common stock? A. No, I don't know what Mr. Lee's mental processes were. I can't state what he had in mind.

Q. And Mr. Lee's affidavit doesn't help us in that respect? Is that right?

MR. KING: I object to that question. It is pure argument.

TRIAL EXAMINER: Objection sustained.

By MR. HALL:

Q. So far as you know Mr. Lee never attempted to value the McCall common or preferred stock until you made your request for a valuation of the common stock in connection with your original cost determination? A. How did that question start?

(Question read.)

THE WITNESS: That is correct.

By MR. HALL:

Q. Did Mr. Lee, at the time he prepared his statement, know of any valuations of the McCall common or preferred stock made by his firm or anyone else? A. Not so far as I know or can recall.

Q. Did you ask Mr. Lee if he knew of any valuations of the McCall common or preferred stock made by anyone else? A. No, I don't think I asked him that question.

Q. Mr. Lee, then, had no knowledge of any contemporaneous [7057] valuation of the McCall common or preferred stock made in 1905 to 1907?

THE WITNESS: I don't know.

By MR. HALL:

Q. Did the records of Lee, Higginson and Company show any purchases or sales of McCall Ferry common stock at \$25 a share? A. It is my understanding they did not. As I recall it Mr. Lee said they kept the 5,000 shares and realized a total loss on it.

Q. Did the records of Lee, Higginson and Company show any purchases or sales of McCall Ferry common or preferred [7058] stock at any price? A. Not so far as I know.

[7059] By MR. HALL:

Q. Mr. Lee's difficulty to place a value on the common stock was due to the fact he was attempting a determination 34 years after the transaction. Isn't that so?

THE WITNESS: No, I don't find that here. The second paragraph of Mr. Lee's affidavit on Page 66 states what his difficulty was, and reads as follows: "It is difficult for me to place a value on this stock because of the long lapse



of time since the transaction, and also because the enterprise passed through a receivership and the stock ultimately became worthless."

By MR. HALL:

Q. Doesn't that mean substantially what I said? A. 34 years is 34 years, but it doesn't so state.

Q. But Mr. Lee did not let the difficulties he [7060] encountered deter him from placing a value on the stock, although others confronted with the same difficulties declared their inability to do so. Isn't that so? A. May I have that question, please?

TRIAL EXAMINER: Yes.

(Question read.)

THE WITNESS: To whom do you have reference?

By MR. HALL:

Q. Mr. Griscom, for instance. A. Yes, Mr. Griscom said he couldn't, but I think that—

Q. Mr. Griscom was connected with the firm of Bertron, Storrs & Griscom in 1905, 1906 and 1907 and 1908? A. He managed the Philadelphia office of that firm and the McCall Ferry proposition was handled from the New York office by Mr. Bertron.

Q. Being a member of the firm didn't help matters. Is that it? A. Well, I shouldn't say—

MR. KING: I object. That is argumentative.

TRIAL EXAMINER: Sustained.

By MR. HALL:

Q. What records did Lee, Higginson and Company have with respect to the McCall Ferry development which had a bearing on the cash value of the common stock? A. I don't recall all the records they had, but some [7061] of them as I recall are in Exhibit 27.

Q. Are they all in Exhibit 27? A. I don't know whether they are or not. All of them we have are either

in Exhibit 27 or in the company's files which have been available to the Commission staff.

[7063] Q. What records did Mr. Lee review which are not part of Exhibit 27? A. I don't know.

Q. Did Mr. Lee show you any of the records to support [7064] his valuation of the McCall Ferry common stock?

MR. KING: Do you mean any of his records that are not in Exhibit 27?

MR. HALL: That is right.

THE WITNESS: No. He didn't show me any of the records. As I said, he did show me, I believe, a substantial tabulation that had been made from his records for him, but as for seeing the documents or the records from which the results show on the tabulation came from, I don't recall seeing them.

By MR. HALL:

Q. What did the tabulation reflect? A. As I recall it it was a tabulation showing what Lee, Higginson, as a firm, had realized on other underwritings, I believe from 1900 to about 1910, in projects similar or as nearly similar as they had to McCall Ferry Power Company.

Q. How did that support any valuation for the McCall Ferry securities? A. I don't know any way that it supported it other than as Mr. Lee stated in his affidavit.

Q. Are you vouching for the similarity between McCall underwriting and the other underwritings? A. No, sir, I am simply stating the facts Mr. Lee told me.

Q. Do you have available a copy of the tabulation [7065] which Mr. Lee showed you? A. No, sir, he kept it himself. It was a long hand-written tabulation.

Q. What underwritings did Mr. Lee analyze? A. I don't recall. The only two I recall, and I am not too certain about those, were Colorado River Power Company and Washington Water Power. I do recall he had several others but I don't recall the names of them.

Q. What was the nature of the underwritings which he analyzed? A. I don't recall. As a matter of fact, I don't think I ever knew in detail.

Q. In other words, Mr. Gunn, you are in a position of not being prepared to be cross-examined on the reliability of the analysis made by Mr. Lee.

. . .

THE WITNESS: That is certainly a fact. I don't think I ever had enough information to have undertaken cross-examination on them.

. . .

[7066] By MR. HALL:

Q. What is the basis for Mr. Lee's statement that his firm would not have participated in the McCall Ferry proposition unless they had believed the stock worth \$25 per share? A. May I have that question, please?

(Question read.)

[7067] THE WITNESS: I don't know what his basis was. It would seem to me it was probably largely his judgment and recollection, plus his study of these other projects I have stated.

By MR. HALL:

Q. What other members of Lee, Higginson and Company did Mr. Lee consult at the time his affidavit was prepared? A. I don't know.

Q. What other members were alive at the time he prepared his affidavit? A. I don't know.

Q. If he did not consult, assuming he didn't, other members of Lee, Higginson and Company at the time he made his affidavit, how was he in a position to state what their belief in 1905 might have been?

. . .

THE WITNESS: You are asking me to assume he didn't talk to any others. Is that your question?

[7068] By Mr. HALL:

Q. That is correct. A. I don't know. If you assume he didn't talk to any others then it would seem to me the statement is his own opinion.

Q. So far as you know that is all it is, Mr. Lee's opinion? A. I don't know whether it is or isn't, as I said, I don't know whether he talked to any other members of the firm. I don't know whether there are any more living or not.

Q. Was Mr. Lee an officer or director of McCall Ferry Power Company or Susquehanna Contracting Company? A. Well, he was not of Susquehanna Contracting Company. I am pretty sure of that. I don't recall he was of McCall Ferry Company. That can be checked.

Q. My information, Mr. Gunn, is that Mr. Lee was neither an officer or director of McCall Ferry Power Company or Susquehanna Contracting Company. A. That is my recollection, also.

Q. Did Mr. Lee ever attend as an observer any meetings of the board of directors or the executive committee of either McCall Ferry or Susquehanna Contracting Company? A. I haven't the remotest idea.

Q. Did the early records disclose that Mr. Lee was consulted by McCall Ferry on any of its problems? [7069]

A. The early records of McCall Ferry?

Q. Yes. A. I never made an investigation to ascertain that.

Q. Wouldn't it be in the fifteen files you have referred to several times? A. Yes, it very well may have been. But the volume of those files is such that I cannot remember everything that is in them, and unless I had been looking for some specific thing I might well have passed over some indication of the question you have just asked me. Having no interest in it, I would have taken no note of it.

. . .

[7070] Q. Does Mr. Lee at any place in his statement refer to his valuation as being the cash value of the stock? A.



I don't know. Shall I read the statement? I don't recall it. Shall I read it?

Q. Do you understand Mr. Lee's valuation to have been made as representing the cash value of the common stock?

A. That was my understanding of it.

Q. As used in Electric Plant account instruction 3-D?

A. Yes, or at least the nearest approach to that which was available.

[7071] Q. Did you ever show Mr. Lee Electric Plant account instruction 3-D? A. I don't know whether I

showed him the instruction or not. When I first asked him for his assistance I told him the purpose for which it was to be used and I am pretty sure I explained it to him.

Q. Did you explain Electric Plant Account instruction 3-D to Mr. Lee? A. I think I told him what the thing said and what our lawyers concluded it meant.

Q. What did you tell him? A. I don't recall the words I used, but I think I told him that the company was required by the Federal Power Commission to determine the original cost of its property and that in order to ascertain the original cost it was necessary to make an evaluation of the common stock, and that our lawyers had examined the facts as we knew them up to that time and thought it was desirable to obtain Mr. Lee's opinion as to what his services were worth, and from that a statement of the valuation of the common stock.

Q. You assumed that when Mr. Lee said "Stock worth \$25 per share", he meant cash value as specified in Electric Plant account instruction 3-D? A. I assume he meant cash value from all the things he said in the affidavit about the value of the stock. You [7072] have taken a few words out of context. As I recall it, there are some more words in there.

Q. Isn't it a fact that stock may be worth to a person a certain amount but that it could not be sold for that amount? A. I don't know how that would exist. It might be worth to a person a certain amount and he might

not wish to sell it, and therefore it might not be sold for that amount.

Q. And he might not be able to sell it for cash. Right?  
A. I don't think so. That is not my understanding of the cash value.

Q. Do you think that it is synonymous to say that stock is worth a certain amount and that it can be sold for the same amount?  
A. That is my understanding if you undertook to sell it. I don't know how it could be otherwise. I thought we agreed several days ago that the two were synonymous.

Q. It is a fact that Mr. Lee does not specifically state that common stock of McCall Ferry could have been sold for \$25/a share at the time of the transaction or at any time thereafter?

MR. KING: You mean states in the affidavit?

MR. HALL: That is right.

MR. KING: If that is what you mean I object to the [7073] question because the affidavit speaks for itself.

TRIAL EXAMINER: Read the question, please.

(Question read.)

TRIAL EXAMINER: Objection is overruled.

THE WITNESS: I don't believe Mr. Lee uses that particular terminology. However, I took it to be substantially the equivalent of that when he said that if partners were being admitted, or were leaving the firm, that in his opinion \$25 would be the value at which the readjustment of the firm's membership would be made.

By MR. HALL:

Q. What is Mr. Lee's opinion based upon when he states that a division of the firm's assets immediately following acceptance of the stock would have been based on a value of not less than \$25 a share?  
A. I don't know. I will speculate he based it on all of his study as to the value of the stock.

Q. What divisions of assets took place in the firm of Lee, Higginson and Company around 1905? A. I don't know.

Q. Or any year thereafter? A. I don't know.

Q. But it does not mean, does it, that valuation for the purposes of division of assets of a partnership is necessarily the same as cash value in the open market? [7074] A. No, it doesn't necessarily follow. If the partners chose to make it different they could have made it different.

Q. Did Mr. Lee make any studies of market conditions in the spring of 1905? A. I don't know whether or not he did, but he was pretty active in business there. It doesn't follow that if he didn't make studies he had no knowledge. I don't know.

Q. Did Mr. Lee find any valuation by Lee, Higginson and Company of their services to McCall Ferry? A. I don't know. I don't know what occasion there would have been to make such a valuation.

Q. Did you find any such valuation available—withdraw that.

Did you find any such valuation in the available records relating to the McCall Ferry project? A. Valuation of Lee, Higginson's services, do you mean?

Q. Yes. A. No.

Q. Have you found in the available records any agreement showing that McCall Ferry or Susquehanna Contracting Company had contracted to pay Lee, Higginson a specified amount for services? A. No, sir. I think it is obvious that nobody had contracted to, because when it comes time to pay Lee, Higginson off they were in the situation of having to write a [7075] letter to Bertron and telling him how much they got. If it was a contract or agreement they obviously would know how much they were supposed to get.

Q. The fact is, is it not, that McCall Ferry never paid anything either in cash or in securities to Lee, Higginson and Company or to any of the other bankers?

MR. KING: May I have that question again, Mr. Examiner?

TRIAL EXAMINER: Yes.

(Question read.)

THE WITNESS: Are you making a distinction between McCall Ferry paying directly and those securities passing through Susquehanna Contracting Company?

By MR. HALL:

Q. Yes, that is the distinction. A. McCall Ferry delivered their securities to Susquehanna Contracting Company, and then, in accordance with understandings, as I believe, the securities passed on to those people who were supposed to get them.

Q. These understandings that you referred to are not supported by the written documents covering the transfer to Hutchinson. Right? A. No, the distribution of stock is not given in the transfer to Hutchinson, the document which is the agreement between Susquehanna Contracting Company and Hutchinson.

Q. What you are saying is that Hutchinson got all of [7076] the securities which subsequently wound up in the hands of the bankers as their compensation? A. Yes, sir. They passed under that agreement to Hutchinson, and then we also have other evidence, of course, which showed up in the records of Lee, Higginson and Bertron we have already discussed in detail.

Q. None of the documents covering the transfer of the securities to Hutchinson support a conclusion that McCall Ferry paid anything to the bankers?

[7077] THE WITNESS: I don't know whether they do or not. It would seem to me that they are certainly a part of the support. Whether they standing alone would support it or not I don't know.